OIRA IMPLEMENTATION OF THE CONGRESSIONAL REVIEW ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

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OIRA IMPLEMENTATION OF THE CONGRESSIONAL REVIEW ACT

TUESDAY, MARCH 10, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Sessions, Tierney, and Kucinich.

Staff present: Mildred Webber, staff director; Sean Cunningham, counsel; Andrew Wilder, clerk; and Elizabeth Mundinger, minority counsel.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order.

The purpose of today's hearing is to examine the progress of the Office of Management and Budget in implementing the Congressional Review Act. And I want to welcome our witness, Mr. Timothy Dean, who traveled from Oklahoma to tell us about the troubles he had with a regulation that was illegally issued in violation of the Congressional Review Act.

I also want to welcome Mr. Robert Murphy, the general counsel of the General Accounting Office, who has exercised strong leadership in implementing the CRA.

I am afraid I do owe an apology to Mr. Dean and Mr. Murphy. Today's hearing was intended to be an exchange of information between GAO, the subcommittee, and the Office of Information and Regulatory Affairs, or OIRA, which is part of the Office of Management and Budget and charged with implementing the Congressional Review Act. Our intention was to bring OMB here to sit down with GAO, the subcommittee, and the witnesses from the general public to discuss how we can all work together to make CRA function more effectively.

I am deeply disappointed to announce that the leaders of the OMB have refused to participate in today's hearing. This hearing was first scheduled to take place on February 12, and invitations went out on January 26. In order to give OMB more time to prepare for the hearing, the subcommittee postponed the hearing date until today. OMB has known about our intention to have this hearing for 6 weeks. Finally, as of last week, OMB informed me and

my staff director that no politically appointed official from OMB would be made available to testify on behalf of the administration.

This is the first time this has happened in my 3 years as chairman of OIRA's authorizing oversight committee. Under normal circumstances I would have postponed this hearing. However, I got the firm impression that this refusal to testify was not a scheduling conflict. And, with no OIRA Administrator candidate in the offing, I feel that it is my duty to carry out my oversight responsibilities in a timely manner.

From the time the CRA became law, the subcommittee and GAO have repeatedly encouraged OIRA to take the lead in implementing CRA in the executive branch. Specifically, within days of CRA becoming law in April 1996, the subcommittee staff met with OIRA Administrator Sally Katzen to discuss OIRA's plans to provide guidance to the agencies on how to file the required reports.

The legislative history of CRA was very clear about OIRA's responsibility to cooperate with GAO to develop uniform formats for rule reporting. The GAO has taken its responsibilities under CRA very seriously. In December 1996, GAO submitted a proposed questionnaire to serve as a standard format for the agencies to use in reporting rules. Ms. Katzen, as a chair of an interagency regulatory working group, rejected GAO's proposal for reasons that I would have liked to have learned today.

Also in December 1996, the subcommittee sent oversight letters and requested documents on OIRA's implementation of CRA. The response was disappointing. OIRA had issued a two-page summary memo and a question and answer sheet on CRA after the act first became law, but that was about it.

To follow up throughout the early months of 1997, the subcommittee staff had informal discussions with OIRA staff on CRA implementation throughout the winter and early spring of 1997. These discussions culminated in a meeting with Ms. Katzen on the Hill in May, in which the staff reiterated our expectations that OIRA work with GAO to develop standard formats and give the agencies guidance on which rules must be reported.

In order to encourage and assist OIRA in implementing the CRA, the subcommittee, and I personally, last September worked closely with the Appropriations Committee to increase OIRA's budget by $200,000 to help with CRA implementation and other OIRA activities. So Congress has funded this, but we haven't seen any action.

The Conference Report and the floor language specifically instructs OIRA to use at least part of this new money to improve its performance on CRA. So far OIRA has done absolutely nothing to improve its record on CRA implementation, which will lead us to the question: Is the money well spent?

Thus, you can see the need for today's hearing. The CRA became law almost 2 years ago in March 1996. The law requires the agencies to file certain reports with Congress for each new rule before that rule can legally take effect. If it is not reported, it is an illegal rule, plain and simple.

I would like to refer to a poster that we have here that has language from the statute making it very clear that the CRA requires that reporting to Congress before the rule could take effect.

The CRA restored representation and accountability to regulation by giving Congress the opportunity to review and, if necessary, disapprove new rules and regulations. The problem is that, as the GAO has found out, the agencies have failed to report hundreds of rules, including many rules that have a major impact on small businesses.

It is not possible for Congress to take its action unless the agencies fulfill their obligations under the law and report those rules to Congress. As this hearing will show, when the agencies break the law, it is the public and the small business that pay the penalty.

Part of the problem is that we don't have a system fully in place yet for ensuring that all rules are reported to Congress, and that the reports arrive in a usable form. Some progress has been made, and we want to applaud the efforts of GAO in particular, whose staff has worked closely with the subcommittee to buildup the reporting process. Also, GAO staff have gone out of their way to develop and implement a computerized, Internet-accessible data base of information on the new rules, but GAO frankly can't do it all.

What the agencies need most is strong leadership and guidance from the executive branch. And it is my view that it is preferable if that guidance comes from the White House. This leadership must come from OIRA. There is nobody in the entire executive branch that knows more about regulatory procedures and substance than the staff of OIRA.

That is why President Clinton in his 1993 Executive order on Regulatory Planning designated OIRA as "the repository of expertise concerning regulatory issues." The President further mandated that OMB through OIRA, "shall provide guidance to agencies [and assist the President and the Vice President and other regulatory advisors to the President] in regulatory planning, [and shall be the entity that reviews individual regulations as provided by this Executive Order.]" This Executive order has had the force of law and remains in effect.

Frankly, I applaud the President for that Executive order, and I would encourage him to review its application and find out whether OIRA is indeed functioning as the repository of expertise concerning regulatory issues and whether they have lived up to their obligations to help the agencies in regulatory planning.

I know firsthand how OIRA works. As Executive Director of President Bush's Council on Competitiveness, I worked very closely with OIRA. I know what their responsibilities are, and what their competent and energetic staff are capable of doing when their political leaders give them the opportunity.

Regrettably, OIRA has done almost nothing to ensure that the agencies are complying with the Congressional Review Act. That leads me to believe that there has been a political decision among political appointees in the White House to ignore their obligations under the law.

In particular, OIRA has provided virtually no guidance on which rules are covered under CRA's definition of a rule; no guidance on when major rules can take effect; and, no guidance as to what to include in each report and in what format.

I have always been a big fan of OIRA. I have the utmost respect for the professional staff and their analysts, but I must admit that

I am increasingly disappointed and disillusioned with the agency's lack of cooperation in this central area of their regulatory responsibilities. Nevertheless, I am optimistic that OIRA can and will do what it takes to get CRA back on track. To make this happen, it is absolutely essential for OMB to cooperate with this subcommittee and GAO. To facilitate this cooperation, the subcommittee after today's hearing, will be happy to prepare some written suggestions of ways in which OMB, GAO and the subcommittee can work together to implement the CRA.

If, however, OMB continues to refuse to cooperate with this subcommittee in sending a witness to our hearing and otherwise cooperating, and if OIRA continues to fail to meet its responsibilities under the CRA and the agencies continue to break the law in the publication of their regulations, it is small businesses and families that pay the price, and, therefore, it will be necessary for this Congress to take action to correct that.

Let me now turn to our new ranking member, Mr. Tierney, for an opening statement on this, and let me again say welcome. I look forward to working with you in that capacity.

Mr. TIERNEY. Thank you, Mr. Chairman. Thank you for holding this hearing today. I believe it is important for this subcommittee to oversee whether the administration is in fact doing all that should be done to make the Congressional Review Act a workable statute.

The Congressional Review Act, as you mentioned, is an important piece of legislation that provides expedited procedures for Congress to disapprove agency regulations. The act requires agencies to provide Congress and the GAO with a copy of each rule, a description of the rule, and relevant analyses that are required by law. If the agencies do not provide this information, it is difficult, of course, for Congress to make an informed decision on whether or not it should disapprove of certain regulations.

Nevertheless, Mr. Chairman, I agree with you that it would be helpful to hold this hearing on OIRA's role in implementing congressional review by having somebody from OIRA here to explain its actions. But it is my understanding, Mr. Chairman, that on Friday, Frank Raines, the Director of the Office of Management and Budget, offered to make Don Arbuckle, the Acting Administrator of OIRA, available to testify here.

It is also my understanding that you refused the offer because you only wanted to have a representative who is a political appointee. And I noted your remarks about your feeling that it was a political decision, and I still think, however, that it would have been helpful to accept Mr. Raine's offer to have Mr. Arbuckle here because we would have explored that aspect, and we could have had some sort of colloquy here and exchange of ideas as to what we may have to address in the context of this particular regulatory situation.

Instead, today we will only be hearing one side of the story. Although this hearing may be one-sided, a hearing record, I suppose, can be more complete. Former OIRA Administrator Sally Katzen testified twice on the role in the Congressional Accountability Act.

She submitted written answers to questions asked during those hearings, and in addition there are memoranda and correspondence indicating OIRA's views on these and other relevant matters. I ask that these data and relevant material be inserted it the record.

Mr. MCINTOSH. Seeing no objection, they shall be included.

[The information referred to follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON D.C. 20503

ADMINISTRATOR

STATEMENT OF SALLY KATZEN
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

March 6, 1997

Good morning, Mr. Chairman and members of this Subcommittee. It is a pleasure to be here today to discuss "Congressional Review of Agency Rulemaking."[1]

This law had the strong support of the President. It was signed on March 29, 1996, almost one year ago. By passing this law, Congress acknowledged and assumed more responsibility for its continuing role in the regulatory system. For too long, Congress has passed a law and then passed the buck, taking credit for mandating clean air, or a safe workplace, only to question or even criticize the agency rule that implements the law.

I welcome the opportunity to discuss what we have done during this past year, and to hear the experience of other regulatory agencies, GAO, and Congress in administering the law.

1. What does the statute require?

To help focus our discussion, let me first summarize this legislation. In general terms, agencies are to send a copy of each new final rule (and certain analyses that they may undertake

[1] 5 U.S.C. chapter 8, passed in Title II, Subtitle E, of P.L. 104-121, March 29, 1996.

related to the rule) to both Houses of Congress (for transmittal to the appropriate authorizing Committees) and to the General Accounting Office (GAO) before the rule can take effect.

When an agency sends a rule to Congress and GAO, the agency is to indicate whether the rule is "major" or not. The statute directs OMB's Office of Information and Regulatory Affairs (OIRA) to find whether a rule meets the statutory definition of "major"-- that is, whether the rule is likely to result in an annual effect on the economy of over $100,000,000; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

The designation of a rule as "major" has several consequences. Unless exempted, a major rule may not take effect until 60 calendar days after it has been submitted to Congress. In addition, GAO is to provide a report to the agency's authorizing Committee on each major rule. Whether or not a rule is designated as "major," Congress has 60 legislative days during which it may use expedited procedures to disapprove the rule.

I want to stress that there are two distinct time periods in the statute -- (1) the delay in effective date for "major" rules, and (2) the Congressional review period, during which the expedited review procedures are available.

(1) Effective Date. "Major" rules can only take effect, with certain exceptions, 60 calendar days after submission to Congress and GAO. "Non-major" rules take effect as they normally do after submission. All of the rules that were submitted to Congress during the past year went into effect according to these effective date provisions.

(2) Congressional Review Period. If, within a prescribed time period, a Member introduces a joint resolution of disapproval, then that joint resolution is subject to certain expedited procedures for consideration in Congress. All rules (both major and non-

major) are subject to this Congressional review for 60 legislative days, which, depending on when Congress is or is not in session, is a time period that can extend to over one-and-a-half years. During this past year, all the rules issued by the agencies went into effect before the expiration of the Congressional review period.

2. What did OIRA do when the statute took effect?

The "Congressional Review of Agency Rulemaking" took effect immediately on the day the statute was signed into law -- on Friday, March 29, 1996. Most agency staff knew little about it. To help them prepare quickly, we had to move quickly. On Tuesday, April 2, 1996, I sent an OMB memorandum (M-96-19) to the heads of all agencies outlining the provisions of the new legislation and discussing the definition of "major." Based on advice my staff received from Congressional staff, I included the address of the House Clerk and the Secretary of the Senate as the place to which agencies should send their final rules.

Two weeks later, after agencies had begun to send their final rules to these officials, I received telephone calls asking that final rules go to the Speaker of the House and the President of the Senate, and that they should be transmitted with a cover letter providing certain information. On April 19, 1996, I sent another memo to the heads of Federal agencies, providing these new addresses and suggested content for the cover letter.

Meanwhile, as Chair of the Regulatory Working Group established under Executive Order No. 12866, I stressed to agency Regulatory Policy Officers the importance of moving quickly to implement this new law. During this time, OIRA staff were receiving a variety of questions from agency staff about what they should do under the new statute. We then prepared a document entitled "Frequently Asked Questions," which was distributed to OIRA staff to answer these questions and to share with agency staff if they so desired. I have attached a copy of each of these memoranda at the end of this written statement.

In addition, because OIRA does not review the regulations issued by the independent regulatory agencies under Executive Order 12866, we had to design a process for us to determine whether the final rule of an independent regulatory agency is "major" within the meaning of the statute. Therefore, we invited regulatory contacts from the independent regulatory agencies (those not subject to Executive Order 12866 review) to a meeting on April 12, 1996, to discuss my April 2 memorandum and how they could best coordinate with us on our determination of "major." After this meeting, the independent regulatory agencies began sending OIRA summaries of their upcoming final regulations for us to decide whether or not these rules were "major." Initially, there was a flurry of staff discussions; this process for the "independents" has now become routine.

For those agencies whose regulations are subject to review under Executive Order 12866, I asked OIRA staff to ensure that the agencies understood which rules were "major." The term, as defined in the statute, is similar, but not identical, to the category covered under section 3(f)(1) of Executive Order 12866 for "economically significant" rules. The statutory definition of "major" was taken from a predecessor Order, Executive Order 12291 (signed February 17, 1981, and revoked September 30, 1993). Accordingly, OIRA staff were told to use the same interpretation that they had relied on when carrying out their regulatory reviews under Executive Order 12291.

3. Where are we now?

As of February 28, 1997, GAO informs us that it had received 58 major rules and 3,609 non-major final rules -- an average of over 75 rules a week. This indicates to me that the agencies are complying with the statute and that the authorizing Committees are receiving a lot of rules.

Notwithstanding the large number of rules being transmitted to Congress, we have had very little experience with the detailed provisions of the statute. Over the last year, Members

have, to my knowledge, introduced very few resolutions of disapproval; neither House has passed any motion to disapprove a rule; nor has any such motion been enacted.

We do know that compliance with this law is not cost free. You are hearing from two rulemaking agencies today about the cost of carrying out their responsibilities under this statute; others have had similar experiences. In addition, as you are hearing this morning, it takes effort and resources for Congressional staff to process the agency submissions, for the authorizing Committees to review them, and for GAO to keep track of all the submissions and prepare reports for major rules. The authorizing Committees may want to reconsider whether the benefits of receiving all final rules through these procedures are worth the cost to those who have to submit, process, and report on them.

I understand that there have been other suggestions for legislative amendments. As we gain experience with this law -- testing our interpretation of it and coming to grips with the unexpected or unintended effects that may arise from it, I would welcome the opportunity to discuss any proposed legislative changes with you.

I appreciate the opportunity to testify, and welcome any questions that you may have.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
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APR 28 1997

The Honorable George W. Gekas
Chairman, Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515-6216

Dear Mr. Chairman:

I appreciate the opportunity to have testified before you on March 6, 1997. Enclosed are the answers to the questions that you sent me on March 18, 1997.

If you have any other questions concerning the Congressional Review Act, please let me know.

Sincerely,

Sally Katzen

Enclosure

cc: The Honorable Jerrold Nadler
Ranking Minority Member
House Judiciary Committee

QUESTIONS FOR SALLY KATZEN

Question: In your testimony, you noted that the General Accounting Office's interpretation of the CRA sometimes provides agencies with a "perverse incentive" to suspend the notice and comment period under the Administrative Procedure Act in order to ensure that a regulation may be implemented in a timely manner. Please elaborate on this observation.

Answer: This issue involves General Accounting Office's (GAO) interpretation of Section 808(2) of the Congressional Review Act (CRA). Section 808(2) provides an exemption from the 60-day delay in the effective date for a major rule. Specifically, Section 808(2) states:

> [A]ny rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

GAO stated in its written testimony, at page 5, that "the 'good cause' exemption is only available for rules that do not involve notice and public comment procedures (those procedures normally followed in rulemaking) . . . ."

At the hearing, I expressed concern about GAO's interpretation because it is "counter-productive to the intent of the Administrative Procedure Act [APA], which is to encourage notice and comment." As I indicated, the APA reflects the view that public notice and an opportunity to comment is beneficial. It also reflects the belief that ordinarily rules should not take effect for at least 30 days after they are promulgated. There are, however, circumstances where an agency might want a rule to take effect on or shortly after promulgation because, for example, it is relieving a regulatory burden, conferring a benefit, or responding to an emergency. Unfortunately, I believe the likely effect of GAO's interpretation of Section 808(2) will be that in those infrequent circumstances where use of notice and comment is discretionary, agencies might be disinclined (or less inclined) to use notice and comment for major rules if it means that at the end of the rulemaking process, they will be precluded from having the rule take effect sooner than 60 days -- solely because they chose at an earlier stage to take the salutary step of involving the public through notice and comment. It is for this reason that I believe GAO's interpretation will create "perverse incentives."

In fact, the language in the CRA does not have to be read in a way that would create such perverse incentives. Rather, "notice" in the Act could refer to the "notice" provided to Congress by Section 801 in the CRA, and the "public procedure thereon" to the "public procedure" for the possible joint resolution of disapproval provided to Congress in Section 802. Indeed, in my conversations with Congressional staff contemporaneous with enactment of the CRA, we sought to determine whether it was the intention of the Congress that there be this perverse effect. Based on these discussions, I understood Congressional intent to be that, even after a major rulemaking had been subject to some APA public notice and comment, an agency would still be able to find that there was "good cause" to make the major rule effective within 60 days.

Question: Please also inform the Subcommittee of the communications received by the Executive Branch from the Congress as a result of the CRA.

Answer: I am aware of very few communications received by the Executive Branch from the Congress as a result of the CRA. I received a letter on December 3, 1996, from the Honorable David M. McIntosh, Chairman, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, posing certain questions related to his oversight of the CRA, and I received your invitation to the March 6, 1997, hearing. There have also been several letters to OMB commenting on various pending rulemakings that raise questions or make comments about whether or not the final rule should be considered a "major" rule under the CRA. I have not maintained a separate file of such letters and it would be difficult at this point to attempt to find them in our correspondence files.

I am also aware of correspondence sent by the House Committee on Education and the Workforce in early April 1997, to the Department of the Interior, the National Endowment for the Arts, and possibly other agencies related to that Committee's request for information related to the CRA. I should note, however, that I have not sought, nor do I routinely receive, copies of requests from Members of Congress to other agencies related to the CRA.

I should also note that OIRA and agency staff have had a number of discussions and other communications over the past year with the GAO related to its responsibilities under the CRA.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
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STATEMENT OF SALLY KATZEN
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
AND
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

July 9, 1997

Good morning, Mr. Chairmen, and members of these Committees. It is a pleasure to be here today to discuss the applicability of the "Congressional Review of Agency Rulemaking" (Congressional Review) statute[1] to the Final Draft of the Tongass Land Management Plan.

Legislative and Congressional Background.

The Congressional Review statute had the strong support of the President. He signed the law over a year ago. The Federal agencies began complying with this law promptly and, based on what I hear, are doing an excellent job. As of July 3, 1997, Federal agencies had submitted 4,912 final rules, including 79 designated as "major" rules within the meaning of the Congressional Review statute, to both House of Congress and to the General Accounting Office (GAO).

In general terms, under the Congressional Review statute, agencies are to send a

[1] 5 U.S.C. chapter 8, "Congressional Review of Agency Rulemaking," passed in Title II, Subtitle E, of P.L. 104-121, March 29, 1996.

copy of each new final "rule"[2] (and certain analyses that they may undertake related to the rule) to both Houses of Congress and to the GAO before the rule can take effect. When an agency sends a final "rule" to Congress and GAO, the agency is to indicate whether the rule is "major" or not.

The statute directs OMB's Office of Information and Regulatory Affairs (OIRA) to indicate whether a "rule" meets the statutory definition of "major" -- that is, whether the rule is likely to result in an annual effect on the economy of over $100,000,000; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

In a June 5, 1997, letter, the Chairmen of the Senate Committee on Appropriations, the Senate Committee on Energy and Natural Resources, and the House Committee on Resources wrote to me regarding the applicability of the Congressional Review statute to the Tongass Land Management Plan. Specifically, they wished to apprise me "of [their] view that this massive and long-awaited proposed policy revision [to the Tongass Land Management Plan] must rightfully be considered both a 'rule' and a 'major rule' " under the Congressional Review statute. In your July 2, 1997, letter of invitation to this hearing, you indicated that you would be looking into the question of whether the Tongass Land Management Plan is both a "rule" and a "major rule" under this legislation.

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[2] 5 U.S.C. 804(3).

Is the Tongass Land Management Plan a "Rule"?

The Congressional Review statute states that "[b]efore a rule can take effect, the Federal agency promulgating such rule shall submit" it to both Houses of Congress and the GAO.[3] The plain implication of this provision is that it is the agency promulgating the regulation that has the responsibility for determining whether a particular issuance is a "rule" under the Congressional Review statute.

This allocation of responsibility to the promulgating agency makes sense as a policy matter, given the different statutory authorities, practices, program needs, and basic institutional culture of each agency. Moreover, it is fully consistent with agency administration of the Administrative Procedure Act (APA). Since the term "rule" was used in the APA in 1946, each agency has determined, for its own issuances, what is and what is not a "rule" subject to the APA's informal rulemaking procedures. Indeed, I would note that the definition of "rule" in the Congressional Review statute explicitly incorporates the definition of "rule" adopted in the APA, and then makes certain exceptions to that definition. In so doing, it appears to us that the Congress intended to incorporate agency (and any related court) interpretations of what is meant by a "rule" under the APA into the definition of "rule" adopted in the Congressional Review statute.

Upon receipt of your letter of invitation, and in preparation for this testimony, I sought to ascertain whether the Forest Service has decided that the Tongass Land Management Plan is or is not a "rule" as defined in the Congressional Review statute. I was advised that the Forest Service does not consider this Land Management Plan a "rule" within the meaning of the Congressional Review statute. Since that statute passed

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[3] 5 U.S.C. 801(a)(1)(A).

on March 29, 1996, the Forest Service has issued six revisions of Land Management Plans, none of which was treated as a "rule" under the Congressional Review statute.[4] Nor, I understand, has the Forest Service ever treated its Land Management Plans as "rules" subject to the APA's informal rulemaking procedures under 5 U.S.C. 553.

I would note that under Executive Order No. 12866,[5] and its predecessor Orders, Nos. 12291[6] and 12044,[7] OIRA (or its predecessor) has been given the responsibility to review agency rulemakings. I am advised that OIRA has never reviewed Forest Service Land Management Plans under these Orders. During my tenure, OIRA has not reviewed any Forest Service Land Management Plans, nor do we disagree with the Forest Service's conclusion that these Plans do not constitute "rules."

Is the Tongass Land Management Plan a "Major Rule"?

As noted above, the Congressional Review statute gives me the responsibility of determining whether a "rule" is or is not "major."[8] The definition of "major" that I am to use is taken from Executive Order No. 12291, the Executive Order preceding Executive

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[4] In contrast, I am advised that, after the Congressional Review statute passed, the Forest Service published three notice-and-comment final rules which were sent to both Houses of Congress and the GAO under that statute.

[5] E.O. 12866, "Regulatory Planning and Review," 58 Fed. Reg. 51735 (October 4, 1993), Sec. 3(d) & (e), issued by President Clinton on September 30, 1993.

[6] E.O. 12291, "Federal Regulation," 46 Fed. Reg 12193 (February 19, 1981), Sec. 1(a), issued by President Reagan on February 17, 1981.

[7] E.O. 12044, "Improving Government Regulations," 43 Fed. Reg. 12661 (March 24, 1978), Sec. 6(a), issued by President Carter on March 23, 1978.

[8] 5 U.S.C. 804(2).

Order No. 12866, currently in effect. I have instructed OIRA staff to use the same interpretation of "major" that they relied upon in carrying out their regulatory reviews under Executive Order No. 12291. To the best of my recollection, I have consistently deferred to OIRA staff in determining whether a "rule" is "major" for purposes of the Congressional Review statute.

Upon receipt of your letter of invitation, and in preparation for this testimony, I asked OIRA staff whether, assuming arguendo that the Tongass Land Management Plan was a "rule," they would recommend that it be considered "major" under the Congressional Review statute.

Your June 5, 1997, letter suggests that the Tongass Land Management Plan would call for a drop from a harvest of about 320 million board feet annually, to a harvest of about 220 million board feet a year. Assuming that the Tongass Land Management Plan can be properly interpreted as causing a drop in timber harvest of 100 million board feet a year, OIRA staff would interpret the Tongass Land Management Plan as being "major," if it were a rule.

I appreciate the opportunity to testify, and welcome any questions that you may have.

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Mr. TIERNEY. And since OIRA's designee to testify here today will not be allowed, I would also have to take this opportunity to share my understanding of OIRA's position on issues that will probably be discussed. Obviously, OIRA would do a better job of explaining its own position; however, I will do my best to surmise its views from staff discussions and available comments.

Apparently, OIRA's position is that the statutory obligation of that organization under the Congressional Review Act is limited to determining whether a rule is, quote, a major rule. I understand that OIRA believes that the agency, not OIRA, is best suited to interpret when an agency action is, quote, a rule that is covered by the Congressional Review Act.

The courts are charged with interpreting the definition of a rule. The agency and not OIRA is familiar with the case law that is applicable to that particular agency's actions. For similar reasons the agency is also better equipped to interpret the good cause exemption to the Congressional Review Act.

OIRA is also of the view that it cooperated with the GAO when the GAO tried to develop an agency checklist for submitting materials pursuant to the Congressional Review Act. OIRA worked through various drafts of the checklist, which at one point grew to be four pages long. Finally, OIRA wrote that the draft questionnaire would not be sufficiently useful to warrant the imposition of this burden on the agencies. The draft questionnaire would require the agencies to answer 38 questions for each rule, many of which call for legal conclusions or additional documentation. According to OIRA, the idea was dropped after that letter was received, and the GAO did not bring up the issue again.

It sounds like the situation that we often complain being put on small businesses of the regulations and the requirements.

Mr. Chairman, I think we could have avoided this cumbersome process of me having to guess at OIRA's position if we had accepted Mr. Raines' offer to have Mr. Don Arbuckle to testify here today, as incomplete as that may have been, with some of your questions. I hope in the future when the subject of the hearing is the administration's actions, that the administration's designee is at least allowed to testify. It might move the ball a little further along. I also ask that you hold the hearing record open so that OIRA can respond to statements made at the hearing today.

Mr. MCINTOSH. Let's keep the hearing record open for 10 days to give OIRA an opportunity to respond and any additional questions for the witnesses.

Mr. Tierney, it was my experience in working with two administrations prior to this administration, and actually watching the Clinton administration, that it is highly unusual where there are political appointees who are responsible for implementation of policy for them not to appear before Congress. And I did ask Mr. Raines, I understood that he would be very busy at this point with preparing testimony for the Budget Committees, if he would be willing to send his deputy Mr. Lew, who is also politically appointed. And by the way, what I mean by that is somebody who has been confirmed by the Senate into their position. And I think it is, I guess, highly unusual for the administration to take the position that they are refusing to send somebody who would be con-

firmed by the Senate to come before a congressional hearing and give testimony, whereas they do want to send up career officials.

You have to ask yourself why won't the people who are politically accountable, because they are appointed by the Senate—and by the way, not this Congress, but previous Congresses decided that the head of OIRA made such important policy decisions that that position should also be one that is confirmed by the Senate. Frankly, it is somewhat unusual in the configuration of OMB and White House staff. But earlier Congresses, and I agree, felt that it was such a critical policymaking position in the administration that the head of that office should be somebody that is accountable to the Senate in receiving confirmation for their appointment.

So it is with that in mind that I asked Mr. Raines if he would either testify himself or have Mr. Lew come so that we would have somebody who could speak with authority on behalf of the administration.

The other thing I want to share with you, because the legislation on this happened in the previous Congress, is that there is a disagreement about how important it is to review the regulatory agencies and their process. Congress legislated and the President signed as part of the bill in 1996, that we would change some of that process to give Congress more authority in the congressional review process.

I am disappointed, very disappointed, that OIRA feels that they should continue with a very minimal approach to this and let the agencies go and founder on their own on this. So it is to some extent that policy difference that I want to explore in this hearing as well.

Mr. TIERNEY. Just briefly, I don't have a disagreement with you that that is something we should explore. And in fact, that prompts me feeling that we ought to have something from OIRA here. If it is not working the way it was intended to work, then I think we ought to explore that by having some give and take. You rightfully stated that we can all understand why Mr. Raines is not here at this particular time. My understanding is that the person he proffered is probably much more knowledgeable than Mr. Lew would be, and that, to me, would make more sense to have that individual here to participate in this hearing back and forth.

Ms. Katzen did appear before the committee and did offer her information and stuff, and there has been nobody appointed to replace her. My simple comment is not to debate the issue of who is here and not here, it is just that even that witness that was proffered would be more helpful to us than no witness from OIRA at all. And I do want to explore that and look at whether or not we should be changing the legislation if, in fact, it is not working, or what we do to make sure that it works in the way that it was intended, particularly given the confidence that the President has placed in OIRA.

Mr. MCINTOSH. Thank you. I guess we should look forward to the appointment of a head of OIRA. That would solve the problem. Or we could combine the two and have the political appointee and Mr. Arbuckle here in the future.

Let's move on to our first panel. If I could call Mr. Timothy Dean forward.

Mr. Dean, we had hoped you would not have had such a lonely task today. We had invited, and it looked like she would be able to attend, Ms. Carla Sanabria, formerly of Miami, FL, who could not be with us today. Carla came to the United States to seek the American dream. While legally in the United States, she met her husband Angelo and gave birth to her son Luis, who is now 7 years old. Last April, after going through years of immigration hearings and paperwork, Carla was abruptly deported under a new Immigration and Naturalization Service regulation that took effect before the end of the required 60-day period for major rules under the Congressional Review Act.

As a result of the illegal enforcement of this rule, Carla has been denied the due process guaranteed under the fifth amendment and stripped of the custody of her child Luis. Carla now resides in Nicaragua and can no longer visit her husband, her son, or her mother, Pastora, in Miami. The family was not able to make the trip today, so they could not join you on the witness stand. Therefore you will have a lonely task as being our sole witness of the public.

Mr. Dean is president of Environment First, a company that recycled discarded asthma inhalers, and Mr. Dean's recycling operation was a model of American ingenuity and entrepreneurship until one day last year when EPA suddenly reversed its recycling policy and called up Mr. Dean's customers and informed them that the inhalers would now be incinerated instead of recycled. Not only did EPA not report this rule, they still haven't bothered to put it into writing.

So, Mr. Dean, if you would please rise, I will swear you in, it is the policy of this subcommittee to swear in all witnesses.

[Witness sworn.]

Mr. MCINTOSH. Let the record show that the witness answered in the affirmative.

Mr. Dean, would you share with us your—you don't need to read it completely as we will put the written form entirely into the record, but share with us your testimony in your own words.

STATEMENT OF F. TIMOTHY DEAN, PRESIDENT, ENVIRONMENT FIRST, INC., EDMOND, OK

Mr. DEAN. Thank you very much for the invitation to testify, Congressman McIntosh. My name is Timothy Dean, and I am the founder of a unique, small recycling company called Environment First. I am here to testify about a misguided EPA rule that nearly destroyed my business, a rule that I understand was not reported to Congress under the Congressional Review Act.

My company recycles factory-reject asthma inhalers for manufacturers of asthma inhaler products. We recycle the entire inhaler device. The only part we don't recycle is the active ingredient, the asthma medication. Utilizing specialized machinery, we recover the chlorofluorocarbon, or CFC, propellant and remove any impurities. We then resell the purified CFCs for EPA-approved industrial uses. We are proud of the fact that we have one of the few recycling operations in the country which is economically viable. We have perfected the process and have built up an efficient operation to the point where we are the most affordable alternative for manufacturers of asthma inhalers.

Our process is also the best environmental option for our customers. We recover the CFCs in each inhaler for reuse without any significant release into the atmosphere. Until recently, the EPA has agreed with us that this was a win-win solution.

For years, the EPA has strongly supported CFC recycling. Under the Clean Air Act, the Montreal Protocol, President Clinton's Executive order and the EPA's own regulations published in the Federal Register, the EPA's written, established policy was to encourage and promote recycling of CFCs, on the understanding that recycling or reuse of waste is always better for the environment than landfilling or incineration. Until last year, the EPA has specifically encouraged the recycling of inhalers with CFCs.

In light of that established policy, you can imagine my surprise to hear what the EPA did in April of last year. An official of the Stratospheric Protection Division of the EPA made a, quote, verbal suggestion, end quote, to my customers, the inhaler manufacturers, that they should immediately begin incinerating all discarded inhalers instead of recycling them. The EPA didn't bother to contact or notify me, or my company, or the public in any way. No, they simply whispered to our customers behind our backs to stop recycling and start incinerating.

It was only when one of our largest customers stopped shipping to us that we found out about this new ruling. We called the EPA's Stratospheric Division, and they confirmed what made no sense. Although they called it merely a verbal guidance, the EPA said that they would like inhaler manufacturers to incinerate reject inhalers rather than destroy them through recycling, and they indicated that by the summer of 1997, they would issue a "letter regulation" to all companies manufacturing inhalers. To date there is still nothing in writing.

Even though the EPA has published no law, no regulation, no comment, no memo, no anything, regarding this change in policy, most inhaler manufacturers acknowledged the power and control of the EPA by suspending inhaler recycling and cooperating with the EPA's stealth policy, regardless of whether it was in their best economic or environmental interest.

Because the EPA has the final say over the quantity of CFCs which can be used by each manufacturer in a given year, and the manufacturers don't want to lose their share of available CFCs, they do whatever the EPA tells them to do. Supposedly the EPA's rationale for switching from recycling to incineration was to cut down on the release of CFC gases into the atmosphere. However, there was no scientific review of this rationale and no request for public comment. In fact, we understand that the EPA's own scientists and incineration experts refused to support this guidance.

Any competent chemist knows that incineration is a poor choice for destroying CFCs, because CFCs are noncombustible, and they cannot be thermally broken down inside commercial incinerators. The result of attempting to incinerate CFCs in an incinerator is the discharge of huge amounts of superheated, untreated CFCs rocketing skyward to destroy the ozone layer. In fact, far more CFCs are released into the atmosphere by incineration than by recycling.

The bottom line is this: The EPA verbally issued this guidance without soliciting expert review, without allowing public comment,

without putting anything into writing, and finally without reporting the rule to allow for congressional review. The EPA did not even research or consult industry experts before arbitrarily whispering this guidance to inhaler manufacturers.

As a result, my fledgling business was nearly destroyed, the environment was compromised, and the public health was put at risk.

Mr. MCINTOSH. Thank you, Mr. Dean.

[The prepared statement of Mr. Dean follows:]

Testimony of: **Mr. F. Timothy Dean**
President and Founder
Environment First, Inc.

Thank you very much for the invitation to testify, Congressman McIntosh.

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I am here to testify about a misguided EPA rule that nearly destroyed my business — a rule that, I understand, was not reported to Congress under the Congressional Review Act.

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Using specialized machinery, we recover the chlorofluorocarbon CFC propellant and remove any impurities. We then resell the purified CFC's for EPA-approved industrial uses.

We are proud of the fact that we have one of the few recycling operations in the country which is economically viable. We have perfected the process and have built up an efficient operation to the point where we are the most affordable alternative for manufacturers of asthma inhalers.

Our process is also the best environmental option for our customers — we recover the CFC's in each inhaler for reuse, without any significant release into the atmosphere.

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For years, the EPA has strongly supported CFC recycling. Under the Clean Air Act, the Montreal Protocol, President Clinton's Executive Order, and the EPA's own regulations published in the Federal Register, the EPA's written, established policy was always to encourage and promote recycling of CFCs, on the understanding that recycling or reuse of waste is always better for the environment than landfilling or incineration.

Until last year, the EPA had specifically encouraged the recycling of inhalers with CFC's.

In light of that established policy, you can imagine my surprise to hear what the EPA did in April of last year. An official of the Stratospheric Protection Division of the Atmospheric Programs Branch of the EPA made a "verbal suggestion" to my customers (-- the inhaler manufacturers), that they should immediately begin incinerating all discarded inhalers instead of recycling them.

The EPA did not bother to contact or notify me, or my company, or the public in any way. No — they simply whispered to our customers behind our backs to stop recycling and start incinerating. It was only when one of our largest customers stopped shipping to us that we found out about

this new ruling. We called the EPA's Stratospheric division and they confirmed what made no sense.

Although they called it merely a "verbal guidance", the EPA said they would like inhaler manufacturers to incinerate reject inhalers rather than destroy through recycling, and they indicated that by summer 1997 they would issue a "letter regulation" to all companies manufacturing inhalers.

To date, there is still nothing in writing.

Even though the EPA had published no law, no regulation, no comment, no memo, no ANYTHING, regarding this change in policy, most inhaler manufacturers acknowledged the power and control of the EPA by suspending inhaler recycling and cooperating with the Stratospheric division's stealth policy regardless of whether it was in their best economic or environmental interest.

The reason inhaler manufacturers listen to this type of "suggestion" or "verbal guidance" from the EPA is simple. As you may know, CFC's have been banned by the EPA because of ozone depletion. However, CFC production has been allowed to continue for defined essential uses. Because CFC use in inhalers has been deemed such an essential use, the EPA has the final say over the quantity of CFC's which can be used by each manufacturer in a given year.

And, since the manufacturers don't want to lose their share of available CFC's — they do whatever EPA tells them to do.

Supposedly the EPA's rationale for switching from recycling to incineration was to cut down on the release of CFC gases into the atmosphere. However, there was no scientific review of this rationale, and no request for public comment. In fact, we understand that the EPA's own scientists and incineration experts refused to support this guidance.

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As a result, my fledgling business was nearly destroyed, the environment was compromised, and the public health put at risk.

Mr. MCINTOSH. Let me ask you a couple of questions, and then each of the panel members will have 5 minutes, and we will just go back and forth until we finish.

I do appreciate you coming forward on this. Tell me, you mentioned it was a fledgling business. What was your business right before this verbal guidance was issued to your customers?

Mr. DEAN. I have a business in southern Indiana at the Indiana Army ammunition plant. I have leased space and told the Army that I would have 10 employees by the end of 1997 and perhaps 20 employees by the end of 1998. When this guidance policy came out, I had five employees. I currently have five employees, and I am struggling with five employees. So I have not been able to make any of the forecasts because my business was virtually ripped away from me.

Mr. MCINTOSH. Do some of the inhaler manufacturers continue to send you the inhalers for recycling?

Mr. DEAN. At this point, regrettably, none have sent them back to me even though they know it is the best method. As far as I know, they have never heard from the EPA beyond what was whispered to them. So the EPA has not retracted any statement or said anything about this. My customers are still in limbo, and many of them are still incinerating asthma inhalers, which is scientifically a very, very poor choice.

Mr. MCINTOSH. Are they stockpiling them?

Mr. DEAN. No, they are all incinerated. Those that are not recycled would have to be incinerated.

Mr. MCINTOSH. Let me make sure I understand the process. When somebody is sold an inhaler for asthma, are they asked to return the empty inhaler to the manufacturer?

Mr. DEAN. No. Actually in my business there are many line rejects. When asthma inhalers are filled, some are overfilled, some are underfilled, some are labeled improperly, and some have dented cans. Those rejects off the lines of the manufacturers are what would come to me for recycling. Also, about 20 percent of what I would receive are returns from drugstores, et cetera, because they were date-expired, or they were not effectively used.

Mr. MCINTOSH. Before the EPA issued its verbal guidance, what was the volume of recycling that took place?

Mr. DEAN. We will process approximately 2 million inhalers in 1997, from various manufacturers in this country and abroad. And I had forecast that we would probably achieve more like 5 million. And I know that the market this year should be more in terms of 10 million inhalers that come from worldwide sources.

Mr. MCINTOSH. Are you the only recycler of these inhalers?

Mr. DEAN. No, there are a couple of other companies that do this recycling, one of which I founded several years ago.

Mr. MCINTOSH. Do you know through public means or otherwise, I guess legitimate means, whether their business also suffered as a result of this?

Mr. DEAN. I do not know that.

Mr. MCINTOSH. You said you continue to process 2 million inhalers. Where did the ones come from after the verbal guidance?

Mr. DEAN. Most of those came from other countries.

Mr. MCINTOSH. So other countries are doing it.

Approximately how much CFC is released, if 2 million inhalers are incinerated?

Mr. DEAN. Well, first understand that an asthma inhaler contains about 99 percent CFCs to serve as the propellant and the dispersing agent for the active ingredient. And it is understood that most of that will be released to the atmosphere just in normal usage. So from an asthma inhaler, I would say 2 million asthma inhalers might produce 200,000 pounds. And probably the worldwide market for reject asthma inhalers might generate as much as 500,000 pounds of mixed CFCs.

Mr. MCINTOSH. So that would be the recycled amount.

Did I follow you correctly that most of it is released during the process of using the inhaler?

Mr. DEAN. Yes, it would be.

Mr. MCINTOSH. So 500,000 pounds worldwide. And how much of that would you be able to recapture in your process?

Mr. DEAN. Well over 90 percent. We would be in the 95 to 97 percentile and getting better, because my technology improves virtually every day.

Mr. MCINTOSH. And would you have some documents or research indicating the facts you mentioned about the CFCs not being combustible and therefore being released into the atmosphere?

Mr. DEAN. Oh, yes.

Mr. MCINTOSH. Could you please submit those to the subcommittee?

Mr. DEAN. Yes, I will be glad to.

[The information referred to follows:]

5. Halocarbons and Other Gases

Overview

Total U.S. Emissions of Hydrofluorocarbons, Perfluorocarbons, and Sulfur Hexafluoride, 1990-1994	
Estimated 1994 Emissions (Million Metric Tons Carbon Equivalent)	29.5
Change Compared to 1993 (Million Metric Tons Carbon Equivalent)	3.5
Change from 1993 (Percent)	13.4
Change Compared to 1990 (Million Metric Tons Carbon Equivalent)	4.5
Change from 1990 (Percent)	18.1

Emissions of halocarbons and other gases with unambiguous global warming effects (hydrofluorocarbons [HFCs], perfluorocarbons [PFCs], and sulfur hexafluoride) have risen rapidly, though from very low levels, in recent years. HFCs were first widely used commercially in the 1990s, when they were introduced as replacements for chlorofluorocarbons (CFCs), whose use is being phased out, pursuant to the Montreal Protocol, because they damage the Earth's ozone layer.

CFCs, hydrochlorofluorocarbons (HCFCs), and several other chlorine-containing gases, have ambiguous effects on global climate change, since their capacity to absorb reflected infrared radiation is offset to some degree by their tendency to react with ozone, which is itself a greenhouse gas. Hence, ozone-depleting substances are not directly included in the total emissions of greenhouse gases described in this report. Emissions of ozone-depleting substances are, however, described in this chapter, since their emissions are believed to have some effect on global climate.

Table 31 summarizes the 1994 U.S. sales, emissions, and global warming potentials of the halocarbons and other gases described in this chapter. U.S. production and sales of many of these chemicals are surveyed by the International Trade Commission [54]. Establishments emitting more than 25,000 pounds annually of many ozone-depleting substances are required to report their emissions, disposals, and recycling of these substances to the EPA's Toxics Release Inventory (TRI) [55]. These data exclude many greenhouse gases and most small-scale emissions, but they offer insight into manufacturing emissions. Finally, the Alternative Fluorocarbons Environmental Acceptability Study (AFEAS) reports on production, sales, and emissions of a range of manufactured greenhouse gases and ozone-depleting substances for most of the world, but does not disaggregate emissions by country [56].

Table 32 summarizes emissions by gas from 1988 to 1995. Emissions of CFCs have declined rapidly in the 1990s, while emissions of HCFCs have expanded. Emissions of HFCs, sparked by the rapid growth in use of HFC-134a in motor vehicles, have grown rapidly in the past 2 years and will continue to do so through the 1990s. Estimated emissions of PFCs have declined in recent years along with declining aluminum production in the United States. Emissions of other gases, which are either

ozone-depleting substances, carcinogens, or both, have declined considerably in recent years.

Chlorofluorocarbons (CFCs)

CFCs are derivatives of hydrocarbons, which are composed of carbon and hydrogen atoms. In CFCs, the hydrogen atoms are replaced with chlorine and fluorine atoms, yielding an array of nontoxic, nonflammable gases useful in a wide variety of applications. CFCs have no natural source, and their high molecular stability allows them to migrate to the stratosphere, where they destroy ozone. Though molecule for molecule they absorb thousands of times more infrared radiation than carbon dioxide, their net warming affect is reduced because of their effect on ozone. Ozone (O_3), beneficial in the stratosphere for its ability to absorb harmful ultraviolet radiation, is also a potent greenhouse gas. Thus, while the direct effect of CFCs is a warming potential far greater than that of carbon dioxide, their indirect effect on ozone reduces their net radiative forcing effects by half [57].

The Copenhagen Amendments of the Montreal Protocol suggest phasing out CFCs by 1996. The United States is implementing these provisions through the Clean Air Act Amendments of 1990 and subsequent EPA regulations, which include allowable production quotas and taxes on inventories and stocks. All production ceased in January 1996, with the exception of small amounts used in metered dose inhalers for asthma patients, for which no substitutes are available.

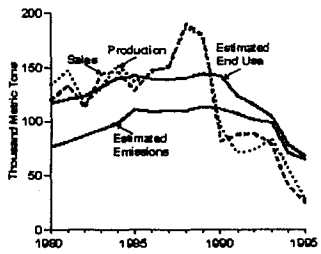
Trichlorofluoromethane (CFC-11)

CFC-11 is principally used as a blowing agent for foams and packaging materials and as a refrigerant in large commercial chillers. Sales have been declining steadily since 1988, with production following roughly the same trend, except for a spike in 1992 [58]. In 1994, production and sales declined by nearly 80 percent, to only 7,000 metric tons [59]. This implies that CFC-11 has been phased out of the blowing agent market completely, and residual CFC-11 is probably used only for chillers. This will be a shrinking source of emissions, as no new CFC-11 chillers are being built, and existing chillers are likely to be retrofitted to use other coolants.

Dichlorofluoromethane (CFC-12)

CFC-12 is often known by its trade name, "freon-12." Exceedingly versatile, its end uses include air conditioning (both automotive and commercial); refrigeration (refrigerators and freezers of varying scales); and as a blowing agent for foams, insulations, and packaging. The signing of the Montreal Protocol in 1987 caused trends in its production, sales, and emissions to fluctuate. Before 1987, the production, sale, and end use of CFC-12 were all nearly equivalent. In 1988 and 1989, production and sales were well above the estimated amount of CFC-12 being incorporated in end uses, suggesting that end users were stockpiling the compound in response to the expected cessation of U.S. production. Production and sales dropped dramatically in 1990 and 1991, falling below estimates of end-use applications and emissions. In recent years, the four figures have once again become consistent, with end use gradually declining as CFCs are phased out (Figure 11) [60].

Figure 11. Production, Sales, End Use, and Estimated Emissions of CFC-12, 1980-1995



Source: Production and Sales—International Trade Commission, *Synthetic Organic Chemicals* (various years). Estimated End Use and Emissions—EIA estimates based on sales of CFC-using equipment.

AFEAS data suggest that use of CFC-12 as a blowing agent decreased by nearly 90 percent between 1988 and 1994 [61]. The use of CFC-12 in refrigeration, however, declined more slowly until 1994. During 1994, automobile, refrigerator, and commercial chiller manufacturers essentially ceased using CFC-12 in their products completely.

In the past year, with production of CFC-12 ending and prices rising sharply, there has been an epidemic of CFC smuggling, particularly from Eastern Europe. A number of individuals have been arrested for smuggling CFC-12 into the United States, particularly in Florida [62]. U.S. Customs believes that CFC-12 may now be the most commonly smuggled commodity after illicit drugs.

Current emissions of CFC-12 from the now dwindling stock of existing equipment are probably on the order of 60,000 to 70,000 metric tons. However, in the next few years, emissions should decline rapidly. At present, emissions are being sustained by the large stock of CFC-using equipment, such as refrigerators and automobile air conditioners. However, the high prices and limited availability of CFC-12 will increasingly encourage people to discard or retrofit rather than repair CFC-using equipment when it fails.

Freon 113 (CFC-113)

CFC-113, also known as "freon 113," is principally used as a solvent. In particular, it is a useful cleaner for electronic circuit boards, because it volatilizes easily and will not damage the circuitry. Such an end use, and others consistent with it as detailed in AFEAS, imply that emissions of CFC-113 are roughly equivalent to production.

Estimated emissions of CFC-113 have been declining rapidly since 1988. In 1994, emissions of CFC-113 reported in the TRI were about 2,300 metric tons—down substantially from the 11,000 metric tons in 1992 [63]. Recycling and treatment of CFC-113 have also declined in recent years, indicating that CFC-113 is being phased out in favor of alternatives.

Dichlorotetrafluoroethane (CFC-114)

CFC-114 is principally used as a solvent. According to AFEAS, roughly two-thirds of all CFC-114 sales go toward short-lifetime end uses, such as cleaning and drying agents, with the rest being used in closed-cell foams and refrigeration applications, where the compound may remain trapped for up to 12 years [64]. In addition, the U.S. Department of Energy uses CFC-114 in the enrichment of uranium. Emissions reported in the TRI, which are a reasonable proxy for industrial emissions, were only 600 metric tons [65].

Monochloropentafluoroethane (CFC-115)

CFC-115 is used primarily as a blending agent for some specialty refrigerants. Northern hemisphere sales in 1994 were only 7,000 metric tons [66]. U.S. emissions in the early 1990s were less than 300 metric tons annually, declining to 150 metric tons in 1994 [67].

Hydrochlorofluorocarbons (HCFCs)

HCFCs are essentially CFCs that include one or more hydrogen atoms. The presence of hydrogen makes the resulting compounds less stable, and as a result they are more susceptible to photodecomposition, have much shorter atmospheric lifetimes than CFCs, and consequently are less likely to migrate to the stratosphere where they would destroy ozone. As a result, they are popular interim substitutes for CFCs. The Copenhagen Amendments placed HCFCs under control, with HCFC-22 slated for elimination by 2020 and all others by 2030. HCFCs still have high GWPs, and these are compounded by the fact that they have weaker indirect cooling effects than do CFCs.

Chlorodifluoromethane (HCFC-22)

HCFC-22 is the most commonly used refrigerant for home air conditioning systems. It is the most widely available and least expensive potential substitute for CFCs in a variety of applications. However, the available evidence suggests that HCFC-22 gained most of its market share at the expense of CFCs in the late 1980s. Total U.S. sales of HCFC-22 declined from 108,000 metric tons in 1991 to 97,000 metric tons in 1994. Production has historically exceeded sales by a substantial margin.

Estimated emissions of HCFC-22 have been rising slowly. AFEAS data suggest that the increased usage of HCFC-22 for long- and medium-lifetime uses has created a "banked" inventory of the compound that is now being emitted.

1,1-Dichloro-1-fluoroethane (HCFC-141b)

Chlorofluorocarbons (CFCs)

(to be published in **The Chapman & Hall Encyclopedia of Environmental Science**, edited by David E. Alexander and Rhodes W. Fairbridge)

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Chlorofluorocarbons (CFCs) are nontoxic, nonflammable chemicals containing atoms of carbon, chlorine, and fluorine. They are used in the manufacture of aerosol sprays, blowing agents for foams and packing materials, as solvents, and as refrigerants. CFCs are classified as halocarbons, a class of compounds that contain atoms of carbon and halogen atoms. Individual CFC molecules are labeled with a unique numbering system. For example, the CFC number of 11 indicates the number of atoms of carbon, hydrogen, fluorine, and chlorine (e.g. CCl_3F as CFC-11). The best way to remember the system is the "rule of 90" or add 90 to the CFC number where the first digit is the number of carbon atoms (C), the second digit is the number of hydrogen atoms (H), and the third digit is number of the fluorine atoms (F). The total number of chlorine atoms (Cl) are calculated by the expression: Cl = 2(C+1) - H - F. In the example CFC-11 has one carbon, no hydrogen, one fluorine, and therefore 3 chlorine atoms.

Refrigerators in the late 1800s and early 1900s used the toxic gases, ammonia (NH_3), methyl chloride (CH_3Cl), and sulfur dioxide (SO_2), as refrigerants. After a series of fatal accidents in the 1920s when methyl chloride leaked out of refrigerators, a search for a less toxic replacement begun as a collaborative effort of three American corporations- Frigidaire, General Motors, and Du Pont. CFCs were first synthesized in 1928 by Thomas Midgley, Jr. of General Motors, as safer chemicals for refrigerators used in large commercial appilications[1]. Frigidaire was issued the first patent, number 1,886,339, for the formula for CFCs on December 31, 1928. In 1930, General Motors and Du Pont formed the Kinetic Chemical Company to produce Freon (a Du Pont tradename for CFCs) in large quantities. By 1935 Frigidaire and its competitors had sold 8 million new refrigerators in the United States using Freon-12 (CFC-12) made by the Kinetic Chemical Company and those companies that were licensed to manufacture this compound. In 1932 the Carrier Engineering Corporation used Freon-11 (CFC-11) in the worldis first self-contained home air-conditioning unit, called the "Atmospheric Cabinet".; Because of the CFC safety record for nontoxicity, Freon became the preferred coolant in large air-conditioning systems. Public health codes in many American cities were revised to designate Freon as the only coolant that could be used in public buildings. After World War II, CFCs were used as propellants for bug sprays, paints, hair conditioners, and other health care products. During the late 1950s and early 1960s the CFCs made possible an inexpensive solution to the desire for air conditioning in many automobiles, homes, and office buildings. Later, the growth in CFC use took off worldwide with peak, annual sales of about a billion dollars (U.S.) and more than one million metric tons of CFCs.produced.

Whereas CFCs are safe to use in most applications and are inert in the lower atmosphere, they do undergo significant reaction in the upper atmosphere or stratosphere. In 1974, two University of California chemists, Professor F. Sherwood Rowland and Dr. Mario Molina, showed that the CFCs could be a major source of inorganic chlorine in the stratosphere following their photolytic decomposition by UV radiation. In addition, some of the released chlorine would become active in destroying ozone in the stratosphere[2]. Ozone is a trace gas located primarily in the stratosphere (see ozone). Ozone absorbs harmful ultraviolet radiation in the wavelengths between 280 and 320 nm of the UV-B band which can

harmful ultraviolet radiation in the wavelengths between 280 and 320 nm of the UV-B band which can cause biological damage in plants and animals. A loss of stratospheric ozone results in more harmful UV-B radiation reaching the Earth's surface. Chlorine released from CFCs destroys ozone in catalytic reactions where 100,000 molecules of ozone can be destroyed per chlorine atom.

A large springtime depletion of stratospheric ozone was getting worse each following year. This ozone loss was described in 1985 by British researcher Joe Farman and his colleagues[3]. It was called ithe Antarctic ozone holeî by others. The ozone hole was different than ozone loss in the midlatitudes. The loss was greater over Antarctic than the midlatitudes because of many factors: the unusually cold temperatures of the region, the dynamic isolation of this iholeî, and the synergistic reactions of chlorine and bromine[4]. Ozone loss also is enhanced in polar regions as a result of reactions involving polar stratospheric clouds (PSCs)[5] and in midlatitudes following volcanic eruptions. The need for controlling the CFCs became urgent.

In 1987, 27 nations signed a global environmental treaty, the Montreal Protocol to Reduce Substances that Deplete the Ozone Layer[6], that had a provision to reduce 1986 production levels of these compounds by 50% before the year 2000. This international agreement included restrictions on production of CFC-11, -12, -113, -114, -115, and the Halons (chemicals used as a fire extinguishing agents). An amendment approved in London in 1990 was more forceful and called for the elimination of production by the year 2000. The chlorinated solvents, methyl chloroform (CH_3CCl_3), and carbon tetrachloride (CCl_4) were added to the London Amendment.

Large amounts of reactive stratospheric chlorine in the form of chlorine monoxide (ClO) that could only result from the destruction of ozone by the CFCs in the stratosphere were observed by instruments onboard the NASA ER-2 aircraft and UARS (Upper Atmospheric Research Satellite) over some regions in North America during the winter of 1992[7,8]. The environmental concern for CFCs follows from their long atmospheric lifetime (55 years for CFC-11 and 140 years for CFC-12, CCl_2F_2)[9] which limits our ability to reduce their abundance in the atmosphere and associated future ozone loss. This resulted in the Copenhagen Amendment that further limited production and was approved later in 1992. The manufacture of these chemicals ended for the most part on January 1, 1996. The only exceptions approved were for production within developing countries and for some exempted applications in medicine (i.e., asthma inhalators) and research. The Montreal Protocol included enforcement provisions by applying economic and trade penalties should a signatory country trade or produce these banned chemicals. A total of 148 signatory countries have now signed the Montreal Protocol. Atmospheric measurements CFC-11 and CFC-12 reported in 1993 showed that their growth rates were decreasing as result of both voluntary and mandated reductions in emissions[9]. Many CFCs and selected chlorinated solvents have either leveled off (Figure 1) or decreased in concentration by 1994[9,10].

The demand for the CFCs was accomodated by recycling, and reuse of existing stocks of CFCs and by the use of substitutes. Some applications, for example degreasing of metals and cleaning solvents for circuit boards, that once used CFCs now use halocarbon-free fluids, water (sometimes as steam), and diluted citric acids. Industry developed two classes of halocarbon substitutes- the hydrochlorofluorocarbons (HCFCs) and the hydrofluorocarbons (HFCs). The HCFCs include hydrogen atoms in addition to chlorine, fluorine, and carbon atoms. The advantage of using HCFCs is that the hydrogen reacts with tropospheric hydroxyl (OH), resulting in a shorter atmospheric lifetime. HCFC-22 ($CHClF_2$) has an atmospheric lifetime of about 13 years[11] and has been used in low-demand home air-conditioning and some refrigeration applications since 1975. However, HCFCs still contain chlorine which makes it possible for them to destroy ozone. The Copenhagen amendment calls for their production to be eliminated by the year 2030. The HFCs are considered one of the best substitutes for reducing stratospheric ozone loss because of their short lifetime and lack of chlorine. In the United

reducing stratospheric ozone loss because of their short lifetime and lack of chlorine. In the United States, HFC-134a is used in all new domestic automobile air conditioners. For example, HFC-134a is growing rapidly in 1995 at a growth rate of about 100% per year with an atmospheric lifetime of about 12 years[12]. (The "rule of 90" also applies for the chemical formula of HCFCs and HFCs.)

Use of the CFCs, some chlorinated solvents, and Halons should become obsolete in the next decade if the Montreal Protocol is observed by all parties and substitutes are used. The science that became the basis for the Montreal Protocol resulted in the 1995 Nobel Prize for Chemistry. The prize was awarded jointly to Professors F. S. Rowland at University of California at Irvine, M. Molina at the Massachusetts Institute of Technology, Cambridge, and Paul Crutzen at the Max-Planck-Institute for Chemistry in Mainz, Germany, for their work in atmospheric chemistry, particularly concerning the formation and decomposition of ozone (in particular, by the CFCs and oxides of nitrogen).

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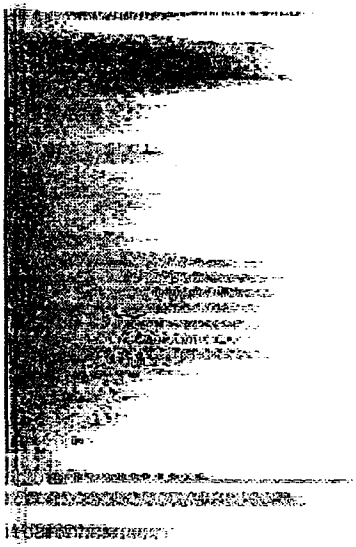

Figure 1: The accumulation of chlorofluorocarbon-11 (CFC-11) in the atmosphere levels off as a result of voluntary and mandated emission reductions. Monthly means reported as dry mixing ratios in parts per trillion (ppt) for CFC-11 at ground level for four NOAA/CMDL stations (Pt. Barrow, Alaska; Mauna Loa, Hawaii; Cape Matatula, American Samoa; and South Pole) and three cooperative stations (Alert, Northwest Territories, Canada (Atmospheric Environment Service); Niwot Ridge, Colorado (University of Colorado); Cape Grim Baseline Air Pollution Station, Tasmania, Australia, (Commonwealth Scientific and Industrial Research Organization)[9].
(Courtesy of NOAA/CMDL)

CFC RECYCLING REPORT

Environment First, Inc. September 9, 1997

Topics Covered Inside this Report

When the EPA knows it can't pass regulations, they intimidate companies with "whispered" policy.

Such a "guidance" has recently been issued by the EPA's Stratospheric Protection Division, intent on quietly reversing the EPA's stated and written policy and undoing 10 years of recycling technology advances.

The policy urges select companies to revert to releasing harmful chlorine and ozone depleting compounds **untreated** to the atmosphere, even though beneficial recycling programs that eliminate releases have been in place for several years.

The guidance misinterprets a section of the Montreal Protocol (international ozone depletion monitoring agreement) and suggests that companies violate federal law by venting chlorofluorocarbons (CFC's) through ineffective destruction techniques in order to speed up the use of existing supplies, which will supposedly act to reduce the potential for release by aftermarkets.

The EPA has spent millions of our tax dollars in the development, implementation, and monitoring of a national CFC recycling program, even requiring CFC recycling through the Clean Air Act.

Fig. 1. USEPA's Published Hierarchy of Waste Management Alternatives.

Why, then, the sudden and suspicious reversal of policy? Apparently, the EPA hopes this whispered "guidance" can go unnoticed until their agenda is complete.

The laws of science, economics, and even the environmental laws of the United States of America, say **this is bad policy** and must be corrected before our air quality is irreversibly damaged. This report focuses on the facts of this issue.

Recycling is not only the obvious choice, it is obviously the ONLY choice.

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INTRODUCTION

For people with asthma and other respiratory difficulties, Metered Dose Inhalers (asthma inhalers) deliver lifesaving medication. Asthma inhalers are small pressurized aerosol canisters, contain propellants that spray needed medication directly to a patients lungs. The only approved, safe, and widely used propellant for asthma inhalers is a mixture of chlorofluorocarbons (CFC's).

Manufacturers of inhalers are required by the US Food and Drug Administration (USFDA) to destroy "beyond recognition" products that are unfit for human consumption. However, because CFC's are chlorinated compounds, and chlorine seems to have stratospheric ozone depleting qualities, questions have been raised as to the best way to treat asthma inhalers that are no longer fit for use.

Recently my company, Environment First, Inc., pioneered a process to completely recycle asthma inhalers which are manufacturing rejects or distribution returns and are unfit for sale. Our process includes the complete recapture and reclamation of the canister contents.

Our process accomplishes this by destroying the canister through a method that allows us to totally recycle 1) the propellant in the pressurized canister (mixed chlorofluorocarbons), 2) the emptied aluminum canister, 3) the plastic applicator, 4) the chipboard carton and paper product description insert, and 5) the corrugated box in which the inhalers are shipped to us. Only the active ingredients of the medication are incinerated . . . less than 1/2% by weight of the inhaler.

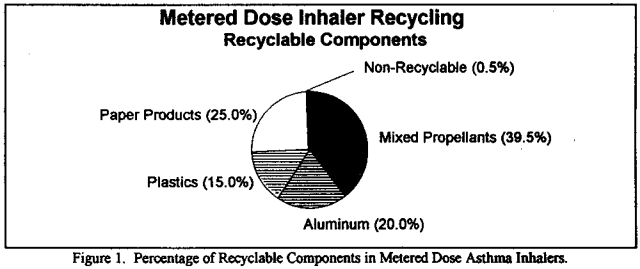

Figure 1. Percentage of Recyclable Components in Metered Dose Asthma Inhalers.

The benefits of chlorofluorocarbon (CFC) recycling are clear. The United States Environmental Protection Agency (EPA) states that recycling reduces emissions and protect our ozone. Both the US Environmental Protection Agency's (EPA's) Clean Air Act and the Montreal Protocol's guidelines (to be described later in this letter) are clearly written in a manner that "encourages and promotes recycling activities".

In the spirit of recycling mandates by the EPA, our recycling program was developed and approved several years ago to upgrade the method of disposal for inhaler manufacturers. Over the past few years, we have performed this valuable service for many manufacturers, proving the economic and environmental benefits of our program. Prior to our recycling program, manufacturers shipped truck loads of inhalers to hazardous waste incinerators for destruction, a process that releases harmful chlorine and fluorine compounds to the atmosphere.

Both the USEPA's Clean Air Act and the international stratospheric ozone protection agreement known as the Montreal Protocol encourage CFC recycling.

HISTORICAL CFC USE IN ASTHMA INHALERS

Because of a demonstrated safety record for non-toxicity and non-flammability, CFC's became the preferred coolant in air conditioning systems. As the USFDA found, CFC's are the best dispersing agents/propellants for inhalers because they are not corrosive nor irritating in the lungs.

When an inhaler is actuated, pressurized CFC's are released with a very small metered dose of medication into a person's lungs. Each dose contains over 99% CFC propellant mixture and less than 1% active medication by weight.

Once in the lungs the CFC's evaporate and are discharged from the patients lungs to the atmosphere leaving a fine residue of medication deposited on lung linings for immediate absorption into the blood stream. The need for CFC's as medical device propellants has always been very small. In fact, the EPA calls it "insignificant". More than one million tons of CFC's are needed annually for industrial uses, and the consumption by inhaler manufacturers represents a very minute portion of this annual production, around 260 tons per year.

About 10 years ago it was discovered that while inert in the lower atmosphere, CFC's undergo a significant reaction in the upper atmosphere. In the upper atmosphere, through UV radiation decomposition, chlorine destroys stratospheric ozone. A loss of ozone results in more harmful UV-B radiation reaching the earth's surface. This deleterious chemical reaction was subsequently confirmed by detecting holes in stratospheric ozone at the earth's poles.

Through an international agreement in 1988, which came to be known as the Montreal Protocol, CFC production was limited. The goal of the Montreal Protocol is to reduce and, through a series of structured phase out programs, ultimately eliminate the industrial use of CFC's.

By 1996, production of CFC's ended for all but essential use applications and research. If the Protocol is observed by all parties and adequate substitutes are found and used, CFC's should become obsolete during the next decade. However, the USEPA, along with the Montreal Protocol, recognizes the industrial need for a continued supply, and recently petitioned CFC manufacturers to continue production to create a stockpile for future use.

The USEPA is the designated agency in the United States to manage the mutually agreed action plan contained in the Montreal Protocol. As such, the USEPA requires all manufacturers of metered dose inhalers to present, each year, their requested annual quantity of "essential use" CFC's. In turn, the USEPA is responsible for insuring there is an adequate supply of CFC's for this use, as well as supervising the transition to non-ozone depleting substitutes.

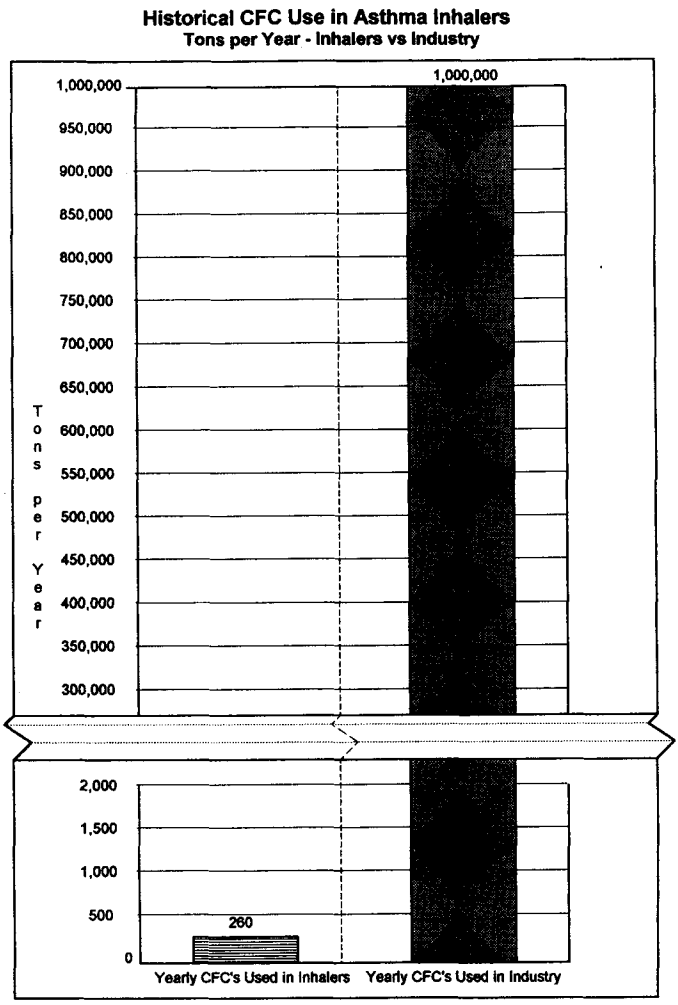

Figure 2. Tons of CFC's Used in Asthma Inhalers as Compared to Total Industry Needs per Year. Values Expressed as Tons per Year.

PROBLEM OVERVIEW AND IMPACT

Because CFC use in inhalers has been deemed an essential use, CFC production for this purpose is allowed to continue. Each year inhaler manufacturers formally submit a request to the USEPA for an annual allocation of CFC's to produce inhalers. The USEPA has the final say about the quantity of CFC's that can be used by the entire industry; and, they oversee the quantity of CFC's which can be used by a particular manufacturer.

Since their guidance comes from the Montreal Protocol, whose goal is to reduce the use of CFC's in non-essential uses, the USEPA's ability to allocate resources is, according to their thinking, unquestioned and their voice can be dictatorial.

Earlier this year the Stratospheric Protection Division of Atmospheric Programs (SPDAP) branch of the USEPA "suggested" to inhaler manufacturers that it would be better to revert to the old method of destroying inhalers by incineration than to recycle. This goes directly against the USEPA's own guidelines as well as the Montreal Protocol itself.

When one of our largest customers stopped shipping to us last month because of this suggestion, we called the USEPA's SPDAP and they confirmed what makes no sense. Although merely a "verbal guidance", the SPDAP said they would like inhaler manufacturers to incinerate reject inhalers to eliminate the CFC propellant once it has been used to pressurize inhalers.

When the SPDAP "suggest" or provides "verbal guidance" to manufacturers that the incineration of asthma inhalers should be preferred over recycling, companies get the implicit message. It is much like the action of the Federal Reserve Bank when they jawbone the commercial banks to not raise interest rates . . . the bank that raises it's rate will be severely "punished" in other ways for not being cooperative.

Since the USEPA has published no law or regulation regarding the incineration of inhalers, but merely suggested one disposal option over another, and because inhaler manufacturers acknowledge the power and control of the USEPA, the future of recycling and the future of my company is in jeopardy.

The arbitrary, and we feel ill advised, decision of an individual or small group of individuals within the USEPA will abruptly end entrepreneurial efforts to create innovative and worthwhile recycling techniques for inhalers and the inhaler manufacturing process. Apparently, the SPDAP feels their unilateral decision is not subject to public or scientific proof, as all published State and Federal regulations require.

However, the USEPA is not an authority unto itself, and when such critical issues are discussed and vital decisions are being made, the USEPA must consult with the US Congress, industry and the American public. As we have discovered through our own research, the decision made by SPDAP has not been researched nor discussed with anyone outside their own division.

The USEPA's policy of intimidating industry by unwritten and unproved "guidance" is a ploy to skirt the public review, discussion, and comment process mandated by the US Congress.

REVIEW OF REGULATIONS

The USEPA mandated recycling programs to create aftermarkets which, in turn, will create the small continued supply needed for effective transition. Now, the USEPA is attempting to also regulate the marketplace and are clearly exceeding their boundaries under Federal law.

The USEPA is required to assist manufacturers in the transition away from CFC's, not govern the economic supply and demand of the aftermarkets.

The clear intent of the applicable regulations is to promote recycling. The Clean Air Act itself states that: "The regulations under this subsection shall include requirements that . . . maximize the recapture and recycling of such substances (CFC's)." [Clean Air Act; 42 CFR 7671g (a)(3)(B)].

Likewise, the Montreal Protocol states that: "The parties shall cooperate . . . in promoting (the) research, development, and exchange of information on (the) Best Technologies for improving the containment, recovery, recycling, or destruction of controlled and transitional substances." [UNEP Montreal Protocol on Substances that Deplete the Ozone Layer; June, 1990; Article 9 (1)(a)]

Until now, the EPA has encouraged the recycling of inhalers due to the obvious benefits and the "insignificant" amounts involved. There has been no regulation of the process, except for registration requirements for CFC reclamation facilities.

The EPA and the Montreal Protocol both recognize the need for continued CFC production for inhalers. It also recognizes that 95% - 100% of the CFC's allocated for use in inhalers will be vented to the atmosphere through normal therapeutic use. It accepts this because of the relatively small amount released through inhaler use in relation to the entire industrial marketplace. Even the EPA has stated that this amount is "insignificant". Product rejects and distribution returns (date expired product) normally make up only about 3% of total asthma inhaler production.

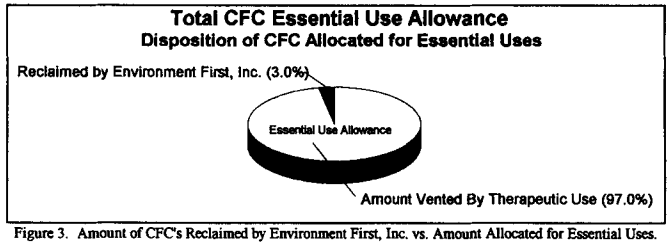

Figure 3. Amount of CFC's Reclaimed by Environment First, Inc. vs. Amount Allocated for Essential Uses.

Why does the recapture and recycling of less than 3% of the yearly inhaler Essential Use Allocation create a problem, when the remaining 97% is allowed to be vented to the atmosphere through normal therapeutic use?

In attempting to understand the SPDAP's decision to recommend incineration of inhalers over recycling, we carefully reviewed the latest update of the Montreal Protocol (UNEP, Decision 8) to find answers. Instead of supporting their stance, we found some serious flaws in SPDAP's interpretation and judgment of Decision 8.

Decision 8 contains, among other things, suggestions regarding reject asthma inhalers. It states the purpose is to "encourage companies to dispose of inhalers containing CFC's in a manner that minimizes CFC emissions." It **does not say destroy by incineration**, nor does is say to destroy the CFC's, but merely asks manufacturers to be responsible in selecting a disposition for the inhaler devices. **As incineration leads to increased emissions, recycling is the only option.**

Further in the Protocol it states that care must be taken to " . . . ensure coordination between national environmental and health authorities on the environmental, health, and safety implications of any proposed decisions on essential use allowance and inhaler transition policies before such decisions are taken." The SPDAP's suggestion to inhaler manufacturers to incinerate inhalers is in violation of this directive . . . no one was notified or asked before this suggestion was delivered.

BENEFITS OF INHALER RECYCLING

To illustrate the "insignificant" amount of material in question, the amount of reclaimed CFC's available commercially through our program accounts for less than 1% of the annual needs of the aftermarket industry. The propellant we recover is refined and reused in completely enclosed and leakproof refrigeration systems, where CFC recycling is also encouraged.

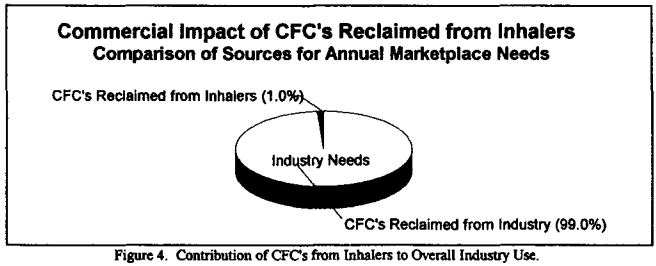

Figure 4. Contribution of CFC's from Inhalers to Overall Industry Use.

And, because refrigeration units are thoroughly tested as leak proof systems (a requirement of the USEPA) it is safe to say that only about 1% of the material generated from our recycling program would accidentally show up in the atmosphere. Compare a potential 0.01% (i.e., 1% of the 1%) release from our recycling program versus the potential release from incineration and the answer is obvious. **Environmentally, recycling is better.**

As illustrated in the following chart, we have compared the pounds of CFC's released to the atmosphere from attempting to burn inhalers (which, again, do not burn), versus the potential releases from our recycling operation. Recycling reduces emissions of chlorinated compounds, untreated fluorine, and CFC's by 90%.

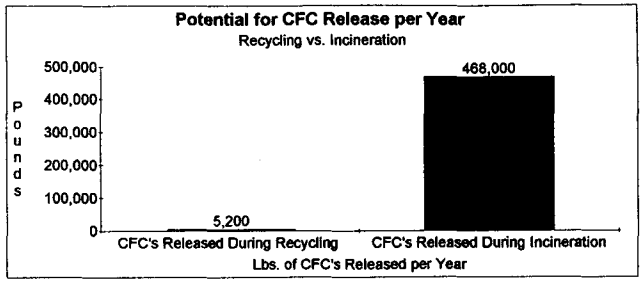

Figure 5. Potential Pounds of CFC's Released per Year from Incineration vs. Recycling.

The greatest waste disposal economic impact to inhaler manufacturers is the high cost of incineration. Because of our commitment to the environment, our recycling service is provided at **no charge** to the largest and best known manufacturers. So, compare an incineration price of around $0.60 per pound to a FREE service. **Economically, recycling is better.**

As illustrated in the following chart, recycling saves money. And, as we advance with other recycling technologies for fugitive emissions, recycling programs can actually provide an economic return to inhaler manufacturers.

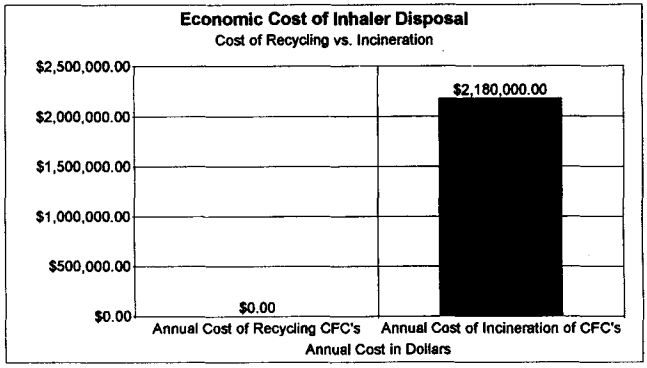

Figure 6. Real Costs of Inhaler Recycling vs. Inhaler Incineration

At the heart of the SPDAP's suggestion is the mistaken opinion that incineration is superior to recycling. If the SPDAP had taken time to analyze their decision, if they had searched scientific literature, if they has read their own organization's published guidelines, they would have discovered that this is completely false. **Recycling is obviously far superior to incineration.**

Figure 7. US Environmental Protection Agency's Published Hierarchy of Waste Disposal Alternatives.

Even in the USEPA's published (not suggested) hierarchy of waste management options, recycling options are at the top -- 1) Reduce, 2) Reuse, 3) Recycle, 4) Incinerate, and 5) Landfill. **Recycling should be supported, not discouraged** by the USEPA as the Best Available Technology for inhaler disposal and also as the most environmentally sound method of reducing CFC emissions when destroying reject inhalers.

Environment First, Inc. Program for Recycling Metered Dose Inhalers Represents the Best Developed Available Technology for the Disposal of Asthma Inhalers.

TRANSITION TO OZONE FRIENDLY HFC'S

It would appear at this time that hydrofluorocarbons (HFC's) will be the CFC replacement of choice for pressurizing inhalers. HFC's are now used in automobile air conditioners and the pace of growth continues to increase each year. We are encouraged that the SPDAP has no objection to recycling inhalers containing HFC.

Our custom made inhaler evacuation machinery is designed to recover HFC's just as well as CFC's. We expect to offer the same environmentally friendly recycling service to our customers using HFC's in the near future when HFC inhalers become the standard. However, if the SPDAP's unwritten "mandate" prevails regarding CFC incineration we will not be able to offer HFC recycling.

There are a few inhalers containing HFC's on the market at this time, but reject quantities are limited. There will not be a sufficient economic volume of HFC inhalers to recycle for at least several years. Therefore, our large investment in developing unique inhaler evacuation equipment will represent a total loss to my company, and more serious, the environment. And, with no recycling alternative, incineration of HFC's is even more detrimental to the environment because after the HFC bond is thermally broken, fluorine is present at twice the volume of CFC's.

By continuing to encourage the recycling of CFC containing asthma inhalers, it will be possible to continue developing technology for recycling HFC containing asthma inhalers.

EFFECTS OF INCINERATION

Incineration is a very expensive method of destruction for inhalers because CFC's are **non-flammable**, and because pressurized containers **explode at high temperatures**. Because of this, a warning is printed on each inhaler canister label and stated in the product insert contained in the consumer package: ***"Do not store near heat or open flame. Exposure to temperatures above 120 degree F may cause bursting. Never throw container into fire or incinerator."***

Unlike aerosol cans pressurized with butane or propane, inhalers produce no fuel value during combustion in an incinerator as the chlorine and fluorine are merely broken down into acid gases, not combusted. This requires the incinerator to use more natural gas to heat the burn chamber. This excessive fuel usage results in even more carbon monoxide and carbon dioxide emissions to the atmosphere along with the fluorine and some chlorine emissions.

Ironically, because the CFC bond is extremely strong, experts have observed that it is unlikely that more than 90% of the CFC's can be thermally destroyed. Certainly the incinerator can ***never*** achieve the required 99.99% fluorine destruction efficiency (sometimes called the "four 9's efficiency" standard) when attempting to burn inhalers under normal operating conditions. As a result, super-heated CFC's enter the atmosphere ***untreated*** through the incinerator stack along with toxic acid gases and rise upward into the stratosphere. In fact, the EPA acknowledges that CFC's are difficult to destroy and, when thermally processed, are released.

More troubling to the incinerator operator is that chlorofluorocarbons break down into ***chlorine and fluorine acid gases*** during thermal treatment, which causes considerable damage to the incinerator's burn chamber refractory brick and fiberglass duct work. Most damaging to the environment, these powerful acid gases are released directly to the atmosphere along with carbon monoxide and carbon dioxide. Fluorine is virtually untreatable as gas scrubbers are ineffective on fluorine compounds.

Finally, incinerator operators that choose to burn inhalers are rendered out of compliance with USEPA air permit requirements which restrict the fugitive emission levels of fluorine . . . **the most reactive element known to man, poisonous and highly corrosive.**

Incinerators have stringent chlorine and (especially) fluorine emission restrictions. Because reject inhalers are delivered for destruction in truck load quantities, typically 30,000 to 35,000 pounds of inhalers per truck, the only way an incinerator can thermally destroy inhalers *and* be in compliance with air quality requirements is to carefully dilute the inhalers with large quantities of combustible "clean" waste to mask the fluorine emissions.

With this dilution, the resultant fluorine emissions are a smaller percentage of the total gas discharged. Although the same amount of fluorine gas is discharged to the atmosphere whether diluted or not, the reportable percentage released is dispersed over time, which can bring the percentage of fluorine to within the operating permit of the incinerator.

This practice is called intentional waste mixture dilution. This waste dilution practice is *specifically forbidden* by Federal Law and USEPA regulations for both waste generators and incinerators. Is the SPDAP encouraging and expecting incinerators to employ this devious tactic and break the law just to accomplish its objective?

The USEPA is asking companies to violate federal law by engaging in unsafe, ineffective, and banned destruction practices. These practices are illegal and result in increasing emissions.

Even worse, the SPDAP, following the Technical and Economic Assessment Panel of the United Nations Environment Program, has indicated to inhaler manufacturers that waste-to-energy "recycling" through incineration is acceptable. Waste-to-energy plants are designed to burn large quantities of curb-side municipal waste from cities and townships. These large furnaces are designed to burn garbage to produce heat to generate steam for power usage in the community (steam and electric).

Since asthma inhalers have **NO fuel energy value**, and because they **explode** in the furnace and release **toxic acid gases** and carbon dioxide, this is the worst possible example of "waste-to-energy". This waste to energy "suggestion" for the destruction of asthma inhalers is defined by the USEPA as "sham" recycling which, again, is ***specifically forbidden*** **by Federal Law** and the USEPA. However, here again the SPDAP, through lack of knowledge or understanding, is condoning . . . even recommending . . . the violation of federal law, and this must be stopped.

We have tried to discuss these issues with SPDAP. To demonstrate the obstinate attitude of the SPDAP, a memo reviewing a discussion with SPDAP regarding incineration of inhalers quotes the SPDAP as saying "The Protocol is clear on the obligation to "minimize emissions", and in this regard incineration is obviously superior to recycling." Scientific fact proves just the opposite. The only way to be convinced that incineration is obviously superior to recycling is if your mind is already made up, you discard all previous USEPA encouragement and approval for industry to find recycling alternatives, and you close your eyes and ears to scientific fact.

In reality, our recycling process virtually eliminates CFC emissions while incinerators release unburned CFC's and component compounds as extremely toxic gases. When confronted with these facts and the inherent problems with inhaler incineration during a phone conversation, SPDAP responded, "I don't know anything about incineration. That's not our area." This specifically shows the lack of thought and concern given this issue by the SPDAP.

The SPDAP is misleading industry and the public by systematically discarding scientific fact, previous knowledge, and current federal law to accomplish their agenda.

TECHNICAL ADVANCES - THE FUTURE OF RECYCLING

In addition to asthma inhaler recycling, we have developed several other recycling programs to protect the environment and ozone layer from harmful emissions.

In conjunction with two other companies we have developed a program to recapture CFC's from inhaler filling stations at manufacturing plants. Inhalers are produced by pouring liquid CFC-11 (approximately 20% of the canister volume) with active ingredients into open top canisters. From this station the partially filled canister moves on to the pressurized gas filling head where the remaining portion of the canister, about 2/3's of the canister, is pressurized with gaseous CFC-12. The canister is sealed by crimping an air-tight lid with actuator to complete the canister filling.

Although manufacturing systems are sealed and tightly fitted to reduce leaks, a small amount of liquid CFC evaporates and pressurized gaseous CFC's escape into the atmosphere on each fill. It has been estimated that our system will capture approximately 90% of all emissions at the source, **eliminating the release of many tons of CFC's**, or HFC's, per year.

A specialized piece of equipment, which was developed with funding from a government grant, can be employed to vacuum off most of these releases and through a patented process separate the CFC's from ambient air. Once captured and separated from the air, the CFC's are stored in a compressed cylinder. When full these cylinders are sent off-site for purification and reconstitution as specification grade CFC-11, 12, and 114.

Although most inhaler manufacturers do not have precise data, the present **loss of CFC's from filling inhalers is as great as the volume of CFC's contained in reject inhalers**, if not greater. We have proposed to a few inhaler manufacturers to be an on-site contractor to install and operate this specialized equipment. The incentive for this service is identical to reclaiming CFC's from inhalers, and HFC's when the conversion is complete. We have a vested interest in collecting as much material as possible to provide a cost-effective service to our customers.

Also, manufacturers clean out processing waste vats and lines periodically each day with alcohol. The cleaning process results in a CFC/alcohol waste mixture which can and should be reclaimed. Presently, drums of this mixture are stored and shipped off-site for incineration. We have offered to pay for the material in these drums but have been told recently that the USEPA discourages the recycling of this material. We have demonstrated earlier in this letter that incineration of CFC's causes serious problems. Again, recycling is best, economically and environmentally.

Our CFC recovery, recycling, and reclaiming program acts to reduce emissions and protect the environment. It must be allowed to continue for the best interest of business and our air quality. For this reason the USEPA should continue to encourage, support, and promote recycling for what it really is . . . the Best Developed Available Technology.

The incentive for innovation in CFC and HFC recovery has come from economically and environmentally sound recycling techniques. If recycling is reduced or eliminated, the economic backbone of capital formation and entrepreneurial spirit will be destroyed, along with any incentive to find improved environmentally friendly recycling applications for industry.

This not only applies to CFC's but to all recycling in general. There is already a strong recycling commitment by industry, the public, and by both local and federal government. If the EPA is allowed to eliminate recycling programs on a whim, this will results in a total loss of the enormous economic investment that has already been made by the country's citizens. The EPA cannot be allowed to operate above the law. Recycling must continue to be supported, encouraged, and even required.

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Recycling is not only the obvious choice, it is obviously the ONLY choice.

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Mr. MCINTOSH. I must say I am outraged that the EPA would go about issuing public guidance to your customers that is not publicly available. The whole purpose of having that whole system of regulatory procedures that we have with public notice and comment is that all citizens have a chance to know what the regulations are, and that all citizens have a chance to comment on them as they are being developed, and that the agency is legally required to address those comments.

And what we have done in the Congressional Review Act is to say that, even in cases where the law doesn't require that you go through that formalized rulemaking process, we want to know about the rules here in Congress so that elected officials can have a chance to review them after the agency puts this type of policy guidance into effect. So it is a classic example where the citizens' rights, and in this case the interests of the environment, are misserved when the agency chooses to ignore the law and feel that it for some reason is above the law.

Let me say, I will pursue this further with EPA in terms of trying to find out their justification for it.

Mr. Tierney, do you have any questions for this witness?

Mr. TIERNEY. I do, thank you, Mr. Chairman. And I have to say that I feel as you do just now, that there is a need for a justification by the EPA of what they have done. I would have preferred hopefully that they could have joined us here this morning maybe to give some feedback to that. And because we thought there had to be some response from them, my staff spoke with the EPA to get some background.

Mr. Dean, I want to thank you for coming here today and sharing your story. I do not necessarily agree at all with the way that the EPA handled the situation that you describe, and I want to make that perfectly clear. However, I do think that it is important to note what they say their explanation was for the record.

According to the EPA, they say that the verbal suggestion not to recycle was made to your suppliers, but it was not a rule. They say the suggestion was based on verbal guidance provided by the State Department, and the United States had an international obligation under the Montreal Protocol, and that is what prompted it. The Protocol allows the usage of CFCs to produce asthma inhalers because it is an essential use. However, when the recycling of the inhaler occurs, it is no longer used for this essential use. It is devoted to industrial use, and that, they thought, would be a violation of the Montreal Protocol. That apparently was why they were making these suggestions. Furthermore, the Clean Air Act provides that it should not be interpreted to abrogate the responsibilities of the United States to implement the Montreal Protocol.

So, Mr. Chairman, just for that explanation, I would like to at least insert into the record a memorandum from the State Department to the Environmental Protection Agency confirming that view, apparently this memorandum coming later, the verbal indications being given much earlier in the year than the October 21 date on that memo.

Mr. MCINTOSH. Seeing no objection, we will include that in the record.

[The information referred to follows:]

United States Department of State

Washington, D.C. 20520

October 21, 1997

TO: EPA - Paul Horwitz

FROM: State/L/OES - Susan Biniaz

RE: Montreal Protocol: Essential Uses

I am writing in response to your fax of October 9, in which you provided information about the operation of a U.S. recycler, and asked for my opinion as to whether that operation appeared consistent with U.S. international obligations under the Montreal Protocol. Specifically, you noted that this recycler was recycling CFCs from off-spec or outdated metered dose inhalers that had been produced using essential use allowances granted by the Parties to the Protocol. Further, you noted that the material recycled was then being deployed into *non-MDI* uses.

On the basis of the facts as described above, and reviewing the relevant Protocol provisions and decisions (i.e., Article 2 and Decisions IV/23, VII/28, and the decisions granting the U.S. the exemptions), it seems that -- in the absence of agreement of the Parties -- it would be a violation of U.S. obligations under the Protocol to allow the recycler to continue to redeploy CFCs recycled from MDIs made with essential use allowances.

While it might be argued that Decision VII/28 did not apply to this use (because off-spec or outdated MDIs were not, in the terms of that Decision, "rendered unnecessary as a result of technical progress and market adjustments"), it still appears clear from the language of Article 2 (which permits the use only "to satisfy uses agreed by them [the Parties] to be essential") and the language of the essential use decision that an essential use exemption is only to be used for the specific purpose for which it is granted -- unless the Parties later agree otherwise.

I hope this responds to your questions. Please let me know if I can be of further assistance.

Mr. TIERNEY. Mr. Dean, you testified that the EPA has not put their policy into writing; is that correct?

Mr. DEAN. Yes.

Mr. TIERNEY. Were you aware that in response to concerns that were raised by you and other recyclers like you, the new FDA reform laws state that the EPA may not encourage incineration over recycling?

Mr. DEAN. Yes, I am aware of that.

Mr. TIERNEY. You participated in the movement to try to make sure that was done, correct?

Mr. DEAN. Yes, I did.

Mr. TIERNEY. In fact, it is not only in writing, it is in law?

Mr. DEAN. Yes.

Mr. TIERNEY. Do you know, sir, whether or not EPA has stopped recommending incineration to your suppliers?

Mr. DEAN. I haven't heard anything after that law was passed back in November. No comment from the EPA one way or the other.

Mr. TIERNEY. Which is certainly preferable to where you were.

Mr. DEAN. It is a step forward, yes.

Mr. TIERNEY. So now the FDA reform law states that they cannot encourage incineration over recycling, so at least it appears that goal has been accomplished.

Mr. DEAN. Yes.

Mr. TIERNEY. I have heard that your business is working to get back on track, and I wish you well in that effort. I thank you for your efforts in making sure this problem was addressed, and I think it was an achievement to get the FDA reform legislation to incorporate that in. Thank you.

Mr. DEAN. Thank you.

Mr. MCINTOSH. Let me ask one followup question on the information that Mr. Tierney brought forward.

Mr. Dean, you mentioned in your testimony that the reuse was for EPA-approved purposes. I take it that is broader than simply going back to other inhalers?

Mr. DEAN. Oh, yes, it would not go back to other inhalers because it wouldn't meet the specifications of the Food and Drug Administration. So it would be redistilled and sold as critically needed refrigerants for other applications, yes.

Mr. MCINTOSH. And you may not be aware, so we can actually address this to the State Department, but as far as you knew, all of those uses were approved under U.S. law?

Mr. DEAN. They are approved, yes.

Mr. MCINTOSH. I am confused why the State Department and EPA would think that they were somehow required to incinerate the input into your process when the output of your process would be a legally usable product, including all the laws—presumably also the Montreal Protocol.

Mr. TIERNEY. Mr. Chairman, only reading what I got, their explanation is that when the inhaler is recycled, it is no longer used for the essential purpose, which is the asthma inhaler situation. It then is used, as you mentioned, sir, for refrigeration and other industrial uses, and that is not considered an essential use under the Montreal Protocol. And their concern was that it would seem to vio-

late the Montreal Protocol based on that, and that is why they were making those suggestions. It seems that with Mr. Dean's fine work, and others, that they have tried to work beyond that point, and I am not sure where they have gone with that.

Mr. DEAN. Can I try to straighten that out? Essential use means it is virgin material for use. And asthma inhalers are fairly complex in that there is more than one form of CFC used. And in the application with an asthma inhaler, it is mixed up in such a way that it has no reuse value whatsoever when it comes out of the asthma inhaler. It must be rerefined, and the impurities must be extracted from that in order to make it usable. The essential use coming in has nothing to do with the mixed waste contaminated material coming out of an asthma inhaler. So it is not an essential use when it comes out of the asthma inhaler.

Mr. MCINTOSH. I would be confused by a policy that said it is OK to use nonrecycled material for nonessential uses, but recycled material can only be used for essential uses.

Mr. TIERNEY. Which is what I understand Mr. Dean got straightened out when he went to the FDA reform bill and got that statement that the EPA may not encourage incineration over recycling now.

Mr. DEAN. I think in this case there was a lack of understanding of how asthma inhalers were manufactured, and they felt that pure CFCs went in and pure CFCs came out whether they were used or rejected, which is not the case.

Mr. MCINTOSH. I appreciate that explanation of the policy questions. It doesn't surprise me in a way that you would have had to have us correct this sort of bizarre policy last year.

Turning back to the question on process, did EPA at any time inform you of this verbal guidance that they were giving to your customers?

Mr. DEAN. No. As a matter of fact, I really heard about this in about January 1997. I was working on a prospective customer who said that they would love to do business with me, but they would have to put that aside until the EPA gave them more notification of what they had intended for incineration, and I really simply couldn't believe it. I couldn't believe that the EPA would even have such a policy. So I went about my business as normal until April. The shoe dropped, you might say, and my biggest customer said, I am sorry we can't ship anymore because we have to incinerate now. So, yes, I was aware of it about January.

Mr. MCINTOSH. And the enforcement of this verbal policy was the implicit threat that they would lose their allocation of CFCs?

Mr. DEAN. Yes, it is a veiled and very implicit threat. I like to refer to it almost as the Federal Reserve telling commercial banks not to raise interest rates. Of course, they can raise interest rates, but they will suffer the wrath of the Federal Reserve bank in other areas. And since the EPA has total control and authority of how much CFCs—essential use CFCs can be used in asthma inhalers, the best course of action for these large multinational companies is to just go along with the policy.

Mr. MCINTOSH. Does EPA also allocate among the different producers an allotment, or do they set an overall amount that can be used, and then the marketplace distributes that?

Mr. DEAN. The industry has set up what is called the IPAC committee of all the asthma inhaler manufacturers in this country. And when they go to the EPA, they go for a bulk amount of CFCs to be used. So the EPA in essence didn't know the actual allocation to each company, because they are working through this cooperative group. But in point of fact, they always know what is being used because each company has to report their usage at the end of each year. So in a manner of speaking, they know exactly what—how much is used.

Mr. MCINTOSH. Has EPA ever asked IPAC to change their allocation or in any way tried to influence that decision?

Mr. DEAN. That I don't know.

Mr. MCINTOSH. I have no other questions for the witness.

Mr. TIERNEY. I have none, thank you, Mr. Chairman.

Thank you, Mr. Dean.

Mr. MCINTOSH. Mr. Dean, thank you. And we will continue to pursue this. I would second your request that we keep the record open as we may have further questions in the next week to 10 days on this issue. Thank you.

Let's call forward our second panel. Our second witness today is Mr. Robert Murphy, who is the general counsel of the General Accounting Office.

Mr. Murphy, thank you for coming today. And again let me reiterate from my opening statement how much I do appreciate the work that you and the General Accounting Office have done with the agencies and in an attempt to work with OMB to try to see that the Congressional Review Act is duly implemented.

Again, if I could ask to you please raise your hand.

[Witness sworn.]

Mr. MCINTOSH. Let the record show the witness answered in the affirmative.

Mr. Murphy, if you could share with us your testimony.

STATEMENT OF ROBERT MURPHY, GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE

Mr. MURPHY. Thank you, Chairman McIntosh, Mr. Tierney. I am pleased to be here today to discuss the GAO's experience in fulfilling its responsibilities under the Congressional Review Act.

We believe the congressional oversight of rulemaking as contemplated by the Congressional Review Act can be an important and useful tool for balancing and accommodating the concerns of American citizens and businesses with Federal agency rulemaking. It is important to assure that executive branch agencies are responsive to citizens and businesses about the reach, cost, and impact of regulations without compromising the statutory mission given to those agencies.

GAO's primary role under the Congressional Review Act is to provide the Congress with a report on each major rule concerning GAO's assessment of the promulgating Federal agency's compliance with the procedural steps required by various acts and Executive orders governing the regulatory process. These include preparation of a cost-benefit analysis, when required, in compliance with the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Administrative Procedures Act, the Paperwork Reduction Act and,

of course, Executive Order 12866. GAO's report must be sent to the congressional committee of jurisdiction within 15 calendar days.

I ought to go back a step, Mr. Chairman. What I had planned to do was abbreviate some of the written statement and ask that it be provided in the record.

Mr. MCINTOSH. Seeing no objection, we will certainly put the entire statement in the record. And feel free to share with us as much as you would like.

Mr. MURPHY. Of course. Of course.

Although the law is silent about GAO's role relating to nonmajor rules, we believe that information about the rules should be collected in a manner that can be of use to Congress and the public. To do this we have established a data base which gathers basic information about the 15 to 20 rules we receive on the average each day. Our data base captures the title, agency, the regulation identification number, the type of rule, the proposed effective date, and other information.

We have recently made this data base available with limited research capabilities on the Internet. I will discuss in a minute our belief that this data base would have more significant value to the Congress if the executive branch agencies would file their reports with us in a standard format either electronically or a manner amenable to modern scanning techniques.

Since the congressional rulemaking review provisions of the Congressional Review Act were enacted in March 29, 1996, we have received 115 major rules, 7,605 nonmajor rules from executive branch and independent agencies.

The Congressional Review Act provides that before a rule can become effective, it must be filed in accordance with the statute. GAO recently conducted a review to determine whether all final rules covered by the Congressional Review Act and published in the Register were filed with the Congress and the GAO. We performed this review both to verify the accuracy of our own data base and to ascertain the degree of agency compliance with the statute. We were concerned that regulated entities may have been led to believe that rules published in the Federal Register were effective, when, in fact, they were not unless filed in accordance with the statute.

Our review covered the 8-month period from October 1, 1996, to July 31, 1997. In November 1997, we submitted to OIRA a computer listing of the rules that we found published in the Federal Register but which weren't filed with our office. This initial list included 498 rules from 50 agencies. OIRA distributed this list to the effective agencies and departments and instructed them to contact GAO if they had any questions regarding the list. Beginning in mid-February, because 321 rules remained unfiled, we followed up with each agency that still had rules which were unaccounted for.

Our office has experienced varying degrees of responses from the agencies. Several agencies, notably the EPA and the Department of Transportation, took immediate and extensive corrective action to submit rules that they had failed to submit and to establish fail-safe procedures for future rule promulgation. Other agencies responded by submitting some or all the rules that they had failed to previously file. Several agencies are still working with us to as-

sure 100 percent compliance with the statute. Some told us they were unaware of the statute or the statutory filing requirement.

Overall, our review disclosed that 279 rules should have been filed with us, 260—I guess we had two filed yesterday, so it must be 266 of these have been subsequently filed; 182 were found not to be covered by the statute as rules of particular applicability or agency management and thus were not required to be filed; 37 rules have been submitted timely, and our data base has been corrected; and 15 rules—13, actually, from six agencies have thus far not been filed.

We do not know if OIRA ever followed up with the agencies to assure compliance with the filing requirement. We do know that OIRA never contacted us to determine if all the rules were submitted as required. As a result of GAO's compliance audit, however, 264 rules have now been filed with the GAO and the Congress and are thus now effective under the statute.

In our view, OIRA should have played a more proactive role in assuring that the agencies were both aware of the statutory filing requirements and were complying with them. One area of consistent difficulty in implementing the statute has been failure of some agencies to delay the effective date of major rules for 60 days as required by the statute. Eight major rules have not permitted the required 60-day delay, including the Immigration and Naturalization Service's major rule regarding the expedited removal of aliens, which you referred to earlier, Mr. Chairman. Also this appears to be a continuing problem since one of the eight rules was issued in January 1998. We find agencies are not budgeting enough time into their regulatory timetable to allow for the delay, and are misinterpreting the good cause exception to the 60-day delay period found in section 808(2) of the statute.

The Congressional Review Act states that, quote, any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unquote, shall take effect at such time as the Federal agency promulgating the rule determines.

In other words, by the explicit language of the statute, this good cause exception is only available if a notice of proposed rulemaking was not published and public comments were not received.

Many agencies following a notice of proposed rulemaking have stated in the preamble to the final rule that good cause existed for not providing the 60-day delay. Examples of reasons cited for the good cause exception include, one, that Congress was not in session and thus could not act on the rule; two, that a delay would result in a loss of savings that the rule would produce; or three, that there was a statutorily mandated effective date.

I have discussed this matter with the former Administrator of OIRA, who is of the view that Congress meant that the good cause exception in another provision of the Administrative Procedures Act was really to apply in these cases. The Administrative Procedures Act has two provisions in which good cause appears, one of which provides that notice and hearing is not required if the agency finds for good cause that notice and public procedure thereon are

impracticable and therefore unnecessary to the public interest. That is the language that we find in the Congressional Review Act.

The view of OIRA is that Congress undoubtedly meant another provision of the Administrative Procedures Act was to be incorporated in the Congressional Review Act. That is a provision found in section 553 of title 5 of the U.S. Code which states that required publication or service of the substantive rule shall be made not less than 30 days before its effective date except as otherwise provided by the agency for good cause found and published for the rule. That is not the language that was carried over into the statute that we are addressing today, Mr. Chairman, and so we have consistently taken the view that as long as an agency has the time to publish a regulation for public comment and to obtain those comments, the good cause exception in this statute does not apply. But as I said, that is not the view as least of the former Administrator of OIRA.

One early question about implementation of the Congressional Review Act was whether executive agencies or OIRA would attempt to avoid designating rules as major and thereby avoid GAO's review of the 60-day delay and the effective date. While we are unaware of any rule that OIRA misclassified to avoid the major rule classification, the failure of agencies to identify some issuances as rules at all has meant that some major rules have not been identified. The statute contains a broad definition of "rule," including more than the usual notice and comment rulemakings under the Administrative Procedures Act which are published in the Federal Register.

"Rule" means the whole or part of an agency's statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy. The legislative history of the statute makes clear that the authors intended a broad interpretation of what constitutes a rule.

In your floor statement, Mr. Chairman, during final consideration of the statute, you stated that all too often agencies have attempted to circumvent the notice and comment requirements of the APA by trying to give legal effect to general policy statements, guidelines, and agency policies and procedures manuals. Although agencies' interpretive rules, general statements of policy, guideline documents, and agency and procedural manuals may not be subject to the notice and comment provisions of the APA, these types of documents are covered under the congressional review provisions of the new statute.

On occasion we have been asked whether certain agency actions constitute a rule under the Congressional Review Act such that it would not take effect unless submitted to our office and the Congress in accordance with the statute. For example, we found that a memorandum issued by the Secretary of Agriculture in connection with the emergency salvage timber sale program constituted a rule under the statute and should have been submitted to the Houses of Congress and GAO before it could become effective.

Likewise we found that the Tongass National Forest Land and Natural Resource Management Plan issued by the National Forest Service was a rule under the statute and should have been submitted for congressional review. In that case OIRA stated that if that forest plan were a rule, it would be a major rule. The Forest Serv-

ice has in excess of 100 such plans promulgated or revised which are not treated as rules under the statute. Many of these may be major rules which should be subject to a Congressional Review Act filing and, if major rules, subject to a 60-day delay for the congressional review.

In testimony before the Senate Committee on Energy and Natural Resources and the House Committee on Resources regarding the Tongass plan, the Administrator of OIRA stated that as was the practice under the APA, each agency made its own determination of what constituted a rule under the Congressional Review Act, and by implication OIRA was not involved in these determinations.

We believe that for the statute to achieve what Congress intended, OIRA must assume a more active role in guiding or overseeing these types of agency positions. Other than an initial memorandum following the enactment of the statute, we are unaware of any further OIRA guidance. Because each agency or commission issues many manuals, documents and directives which could be considered rules, and these items are not collected in a single document or repository such as the Federal Register, it is difficult for our office to ascertain whether the agencies are fully complying with the intent of the statute.

We have also attempted to work with executive agencies to get more substantive information about the rules and to get such information supplied in a manner that would enable quick assimilation into our data base. An expansion of our data base could make it more useful not only to GAO for its use in supporting congressional oversight work, but directly to the Congress and the public.

Attached to this testimony is a copy of a questionnaire designed to obtain basic information about each rule covered by the statute. This questionnaire asks the agencies to report on such items as whether they provided an opportunity for public participation, whether they prepared a cost-benefit analysis, whether the rule was reviewed under Executive orders for federalism or takings implications, and whether the rule was economically significant.

Such a questionnaire would be prepared in a manner that facilitates incorporation into our data base by electronic filing or by scanning. In developing and attempting to implement the use of the questionnaire, we consulted with executive branch officials to assure that the requested information would not be unnecessarily burdensome. We circulated the questionnaire for comment to 20 agency officials with substantial involvement in the regulatory process, including officials from OIRA. The Administrator of OIRA submitted a response in her capacity as Chair of the Regulatory Working Group, consolidating comments from all of the agencies represented. It is the position of the group that the completion of this questionnaire for each of the 4- to 5,000 rules filed each year is too burdensome for the agencies concerned. The group points out that the majority of rules submitted each year are routine or administrative or are very narrowly focused regional, site-specific, or highly technical rules.

We continue to believe that it would further the purpose of the statute for a data base of all rules submitted to GAO to be available for review by Members of Congress and the public and to con-

tain as much information as possible concerning the content and issuance of the rules.

In summary, the Congressional Review Act gives the Congress an important tool to use in monitoring the regulatory process, and we believe that the effectiveness of that tool can be enhanced. Executive Order 12866 requires that OIRA, among other things, provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law.

After almost 2 years of experience in carrying out our responsibilities under the act, we can suggest four areas in which OIRA should exercise more leadership within the executive branch regulatory community consistent with the intent of the Executive order to enhance CRA's effectiveness and its value to the Congress and the public.

We believe that OIRA should first require standardized reporting in a GAO-prescribed format that can readily be incorporated into a data base; second, establish a system to monitor compliance with the filing requirement on an ongoing basis; three, provide clarification on the good cause exceptions and 60-day delay provision, and oversee agency compliance during its Executive Order 12866 review; and finally provide clarifying guidance as to what is a rule that is subject to the statute and oversee the process of identifying such rules.

Thank you, Mr. Chairman. This concludes my prepared remarks. I would be happy to answer any questions that you may have.

Mr. MCINTOSH. Thank you, Mr. Murphy.

[The prepared statement of Mr. Murphy follows:]

Chairman McIntosh, Mr. Sanders, and Members of the Subcommittee:

I am pleased to appear before you today to discuss the General Accounting Office's experience in fulfilling its responsibilities under the Congressional Review Act (CRA). I will also address our efforts to coordinate implementation of the act with the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). Finally, we will offer some suggestions on how OIRA could more effectively exercise its leadership and guidance responsibilities, as required by Executive Order 12866, to enhance the effectiveness of this act.

Congressional oversight of rulemaking as contemplated by CRA can be an important and useful tool for balancing and accommodating the concerns of American citizens and businesses with federal agency rulemaking. It is important to assure that Executive branch agencies are responsive to citizens and businesses about the reach, cost, and impact of regulations without compromising the statutory mission given to those agencies. CRA seeks to accomplish this by giving the Congress an opportunity to review rules before they take effect and to disapprove those found to be too burdensome, excessive, inappropriate, duplicative, or otherwise objectionable.

Under CRA two types of rules, major and nonmajor, must be submitted to both Houses of Congress and the GAO before either can take effect. CRA defines a "major" rule as one which has resulted in or is likely to result in (1) an annual effect on the economy of

$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. CRA specifies that the determination of what rules are major is to be made by OIRA. Major rules cannot be effective until 60 days after publication in the Federal Register or submission to Congress and GAO, whichever is later. Nonmajor rules become effective when specified by the agency, but not before they are filed with the Congress and GAO.

GAO's primary role under CRA is to provide the Congress with a report on each major rule concerning GAO's assessment of the promulgating federal agency's "compliance with the procedural steps" required by various acts and Executive orders governing the regulatory process. These include preparation of a cost-benefit analysis, when required, and compliance with the Regulatory Flexibility Act, the Unfunded Mandates Reform Act of 1995, the Administrative Procedure Act, the Paperwork Reduction Act, and Executive Order No. 12866. GAO's report must be sent to the congressional committees of jurisdiction within 15 calendar days.

Although the law is silent as to GAO's role relating to the nonmajor rules, we believe that basic information about the rules should be collected in a manner that can be of use to Congress and the public. To do this, we have established a database that gathers basic

information about the 15-20 rules we receive on the average each day. Our database captures the title, the agency, the Regulation Identification Number, the type of rule, the proposed effective date, the date published in the Federal Register, the congressional review trigger date, and any joint resolutions of disapproval that may be enacted. We have recently made this database available, with limited research capabilities, on the Internet. I will discuss in a minute our belief that this database would have more significant value to the Congress if the Executive branch agencies would file their reports with us in a standard format either electronically or in a manner amenable to modern scanning techniques.

Since the congressional rulemaking review provisions of CRA were enacted on March 29, 1996, our Office has received 115 major and 7,605 nonmajor rules from Executive branch and independent agencies.

UNFILED RULES

As noted earlier, before a rule can become effective, it must be filed in accordance with the statute. GAO conducted a review to determine whether all final rules covered by CRA and published in the Register were filed with the Congress and GAO. We performed this review to both verify the accuracy of our database and to ascertain the degree of agency compliance with CRA. We were concerned that regulated entities may have been

led to believe that rules published in the Federal Register were effective when, in fact, they were not unless filed in accordance with CRA.

Our review covered the 8-month period from October 1, 1996, to July 31, 1997. In November 1997, we submitted to OIRA a computer listing of the rules that we found published in the Federal Register but not filed with our Office. This initial list included 498 rules from 50 agencies. OIRA distributed this list to the affected agencies and departments and instructed them to contact GAO if they had any questions regarding the list. Beginning in mid-February, because 321 rules remained unfiled, we followed up with each agency that still had rules which were unaccounted for.

Our Office has experienced varying degrees of responses from the agencies. Several agencies, notably the Environmental Protection Agency and the Department of Transportation, took immediate and extensive corrective action to submit rules that they had failed to submit and to establish fail-safe procedures for future rule promulgation. Other agencies responded by submitting some or all of the rules that they had failed to previously file. Several agencies are still working with us to assure 100 percent compliance with CRA. Some told us they were unaware of CRA or of the CRA filing requirement.

Overall, our review disclosed that:

- 279 rules should have been filed with us; 264 of these have subsequently been filed;

- 182 were found not to be covered by CRA as rules of particular applicability or agency management and thus were not required to be filed;

- 37 rules had been submitted timely and our database was corrected; and

- 15 rules from six agencies have thus far not been filed.

We do not know if OIRA ever followed up with the agencies to ensure compliance with the filing requirement; we do know that OIRA never contacted GAO to determine if all rules were submitted as required. As a result of GAO's compliance audit, however, 264 rules now have been filed with GAO and the Congress and are thus now effective under CRA. In our view, OIRA should have played a more proactive role in ensuring that agencies were both aware of the CRA filing requirements and were complying with them.

SIXTY-DAY DELAY AND "GOOD CAUSE"

One area of consistent difficulty in implementing CRA has been the failure of some agencies to delay the effective date of major rules for 60 days as required by

section 801(a)(3)(A) of the act. Eight major rules have not permitted the required 60-day delay, including the Immigration and Naturalization Service's major rule regarding the expedited removal of aliens. Also, this appears to be a continuing problem since one of the eight rules was issued in January 1998. We find agencies are not budgeting enough time into their regulatory timetable to allow for the delay and are misinterpreting the "good cause" exception to the 60-day delay period found in section 808(2).

Section 808(2) states that, notwithstanding section 801, "any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" shall take effect at such time as the federal agency promulgating the rule determines. This language mirrors the exception in the Administrative Procedure Act (APA) to the requirement for notice and comment in rulemaking. 5 U.S.C. § 553(b)(3)(B). In our opinion, the "good cause" exception is only available if a notice of proposed rulemaking was not published and public comments were not received. Many agencies, following a notice of proposed rulemaking, have stated in the preamble to the final major rule that "good cause" existed for not providing the 60-day delay. Examples of reasons cited for the "good cause" exception include (1) that Congress was not in session and thus could not act on the rule, (2) that a delay would result in a loss of savings that the rule would produce, or (3) that there was a statutorily mandated effective date.

The former administrator of OIRA disagreed with our interpretation of the "good cause" exception. She believed that our interpretation of the "good cause" exception would result in less public participation in rulemaking because agencies would forgo issuing a notice of proposed rulemaking and receipt of public comments to be able to invoke the CRA "good cause" exception. OIRA contends that the proper interpretation of "good cause" should be the standard employed for invoking section 553(d)(3) of the APA, "as otherwise provided by the agency for good cause found and published with the rule," for avoiding the 30-day delay in a rule's effective date required under the APA.

Since CRA's section 808(2) mirrors the language in section 553(b)(B), not section 553(d)(3), it is clear that the drafters intended the "good cause" exception to be invoked only when there has not been a notice of proposed rulemaking and comments received.

DEFINITIONS OF RULES AND MAJOR RULES

One early question about implementation of CRA was whether Executive agencies or OIRA would attempt to avoid designating rules as major and thereby avoid GAO's review and the 60-day delay in the effective date. While we are unaware of any rule that OIRA misclassified to avoid the major rule designation, the failure of agencies to identify some issuances as "rules" at all has meant that some major rules have not been identified.

CRA contains a broad definition of "rule," including more than the usual "notice and comment" rulemakings under the Administrative Procedure Act which are published in the Federal Register. "Rule" means the whole or part of an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy.

The legislative history of CRA makes clear that the authors intended a broad interpretation of what constitutes a rule. As Chairman McIntosh noted in his floor statement during the final consideration of CRA,

> "All too often, agencies have attempted to circumvent the notice and comment requirements of the Administrative Procedure Act by trying to give legal effect to general policy statements, guidelines, and agency policy and procedure manuals. Although agency interpretative rules, general statements of policy, guideline documents, and agency and procedure manuals may not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code, these types of documents are covered under the congressional review provisions of the new chapter 8 of title 5."

On occasion, our Office has been asked whether certain agency action, issuance, or policy constitutes a "rule" under CRA such that it would not take effect unless submitted to our Office and the Congress in accordance with CRA. For example, in response to a request from the Chairman of the Subcommittee on Forests and Public Land Management, Senate Committee on Energy and Resources, we found that a memorandum issued by the Secretary of Agriculture in connection with the Emergency Salvage Timber Sale Program constituted a "rule" under CRA and should have been submitted to the Houses of Congress and GAO before it could become effective. Likewise, we found that the Tongass National Forest Land and Resource Management Plan issued by the United States

Forest Service was a "rule" under CRA and should have been submitted for congressional review. OIRA stated that, if the plan was a rule, it would be a major rule.

The Forest Service has in excess of 100 such plans promulgated or revised which are not treated as rules under CRA. Many of these may actually be major rules that should be subject to CRA filing and, if major rules, subject to the 60-day delay for congressional review.

In testimony before the Senate Committee on Energy and Natural Resources and the House Committee on Resources regarding the Tongass Plan, the Administrator of OIRA stated that, as was the practice under the APA, each agency made its own determination of what constituted a rule under CRA and by implication, OIRA was not involved in these determinations.

We believe that for CRA to achieve what the Congress intended, OIRA must assume a more active role in guiding or overseeing these types of agency decisions. Other than an initial memorandum following the enactment of CRA, we are unaware of any further OIRA guidance. Because each agency or commission issues many manuals, documents, and directives which could be considered "rules" and these items are not collected in a single document or repository such as the Federal Register, for informal rulemakings, it is difficult for our Office to ascertain if agencies are fully complying with the intent of CRA.

Having another set of eyes reviewing agency actions, especially one which has desk officers who work on a daily basis with certain agencies, would be most helpful.

DATABASE ENHANCEMENT

We have attempted to work with Executive agencies to get more substantive information about the rules and to get such information supplied in a manner that would enable quick assimilation into our database. An expansion of our database could make it more useful not only to GAO for its use in supporting congressional oversight work, but directly to the Congress and to the public. Attached to this testimony is a copy of a questionnaire designed to obtain basic information about each rule covered by CRA. This questionnaire asks the agencies to report on such items as (1) whether the agency provided an opportunity for public participation, (2) whether the agency prepared a cost-benefit analysis or a risk assessment, (3) whether the rule was reviewed under Executive orders for federalism or takings implications, and (4) whether the rule was economically significant. Such a questionnaire would be prepared in a manner that facilitates incorporation into our database by electronic filing or by scanning.

In developing and attempting to implement the use of the questionnaire, we consulted with Executive branch officials to insure that the requested information would not be unnecessarily burdensome. We circulated the questionnaire for comment to 20 agency officials with substantial involvement in the regulatory process, including officials from

OIRA. The Administrator of OIRA submitted a response in her capacity as Chair of the Regulatory Working Group, consolidating comments from all the agencies represented in that group. It is the position of the group that the completion of this questionnaire for each of the 4,000 to 5,000 rules filed each year is too burdensome for the agencies concerned. The group points out that the majority of rules submitted each year are routine or administrative or are very narrowly focused regional, site-specific, or highly technical rules.

We continue to believe that it would further the purpose of CRA for a database of all rules submitted to GAO to be available for review by Members of Congress and the public and to contain as much information as possible concerning the content and issuance of the rules. We believe that further talks with the Executive branch, led by OIRA, can be productive and that there may be alternative approaches, such as submitting one questionnaire for repetitive or routine rules. If a routine rule does not fit the information on the submitted questionnaire, a new questionnaire could be submitted for only that rule. For example, the Department of Transportation could submit one questionnaire covering the numerous air worthiness directives it issues yearly. If a certain action does not fit the overall questionnaire, a new one for only that rule would be submitted.

We note that almost all agencies have devised their own forms for the submission of rules, some of which are as long or almost as extensive as the form we recommend. Additionally, some agencies prepare rather comprehensive narrative reports on nonmajor

rules. We are unable to easily capture data contained in such narrative reports with the resources we have staffing this function now. The reports are systematically filed and the information contained in them essentially is lost. Our staff could, however, incorporate an electronic submission or scan a standardized report into our database and enable the data contained therein to be used in a meaningful manner.

CONCLUSION

CRA gives the Congress an important tool to use in monitoring the regulatory process, and we believe that the effectiveness of that tool can be enhanced. Executive Order 12866 requires that OIRA, among other things, provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law. After almost 2 years' experience in carrying out our responsibilities under the act, we can suggest four areas in which OIRA should exercise more leadership within the Executive branch regulatory community, consistent with the intent of the Executive Order, to enhance CRA's effectiveness and its value to the Congress and the public. We believe that OIRA should:

- require standardized reporting in a GAO-prescribed format that can readily be incorporated into GAO's database;

- establish a system to monitor compliance with the filing requirement on an ongoing basis;

- provide clarification on the "good cause" exception to the 60-day delay provision and oversee agency compliance during its Executive Order 12866 review; and

- provide clarifying guidance as to what is a rule that is subject to CRA and oversee the process of identifying such rules.

Thank you, Mr. Chairman. This concludes my prepared remarks. I would be happy to answer any questions you may have.

United States General Accounting Office Attachment

GAO Federal Rule Questionnaire

Please fill the circles completely with black pen or #2 pencil.

1. Name of Department or Agency	2. Subdivision or Office
3. Rule Title	4. Rule Identification Number (RIN) or other unique identifier
5. Major Rule ○ Non-major Rule ○ Other ○ _____	6. Final Rule ○ Interim Rule ○ Other ○ _____
7. Priority of Regulation Economically Significant ○ Significant ○ Substantive, Nonsignificant ○ Routine and Frequent ○ Informational/Administrative/Other ○	
8. Effective Date	9. Termination date, if any
10. Concise summary of rule attached ○ stated in rule only ○	

	Yes	No	N/A
A. With respect to this rule, did your agency provide an opportunity for public participation (i.e., notice and comment) in the rulemaking process under the Administrative Procedure Act or agency-specific procedures?	○	○	
B. With respect to this rule, did your agency prepare a cost-benefit analysis (any document that your agency considers a cost-benefit analysis regardless of its title)?	○	○	
C. With respect to this rule, did your agency prepare a risk assessment? If yes, are you submitting the risk assessment to GAO?	○	○	○
D. With respect to this rule, was your agency required to publish a general notice of proposed rulemaking under the Administrative Procedure Act or other law?	○	○	
E. With respect to this rule, did your agency			
1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	○	○	
2. prepare an initial Regulatory Flexibility Analysis under 5 U.S.C. § 603(a)?	○	○	
3. convene a review panel under 5 U.S.C. § 609(b)?	○	○	
4. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	○	○	

	Yes	No	N/A
F. With respect to this rule, did your agency publish a small entity compliance guide under § 212 of Public Law 104-121?	O	O	
G. With respect to this rule, did your agency			
1. prepare a statement including an assessment of costs and benefits and other information under § 202 of the Unfunded Mandates Reform Act of 1995?	O	O	
2. consult with small governments in accordance with a plan consistent with § 203 of the Unfunded Mandates Reform Act of 1995?	O	O	
3. consult with State, Local or Tribal governments under a process described in § 204 of the Unfunded Mandates Reform Act of 1995?	O	O	
4. consider the regulatory alternatives under § 205 of the Unfunded Mandates Reform Act of 1995?	O	O	
H. With respect to this rule, did your agency			
1. prepare an environmental assessment under the National Environmental Policy Act (NEPA) or any other Act?	O	O	
2. prepare an environmental impact statement under NEPA or any other Act?	O	O	
I. Does the rule contain a collection of information requiring OMB approval and a control number under the Paperwork Reduction Act of 1995?	O	O	
If yes, did your agency obtain or is it now obtaining OMB approval and a control number?	O	O	O
J. Did your agency assess the rule for family implications as called for by E.O. 12606?	O	O	
If yes, did your agency determine that the rule may have a significant potential negative impact on family well-being?	O	O	O
If yes, did your agency prepare the written certification required by section 2 of the Order?	O	O	O
K. Did your agency assess the rule for federalism implications as called for under E.O. 12612?	O	O	
If yes, did your agency submit the Federalism Assessment to OMB?	O	O	O
L. Did your agency assess the rule for takings implications as called for in E.O. 12630?	O	O	
If yes, did your agency identify and discuss the rule's takings implications in the notice of proposed rulemaking?	O	O	O
M. Was the rule reviewed under E.O. 12866?	O	O	
If yes, was the rule considered economically significant?	O	O	O
N. Did your agency review the rule under E.O. 12988?	O	O	

Mr. MCINTOSH. I do have several questions. First, I guess, look at this questionnaire. It is fairly clear to me as I review it that what you simply have done there is spell out in detail the requirements that the CRA in fact puts on the agencies. And that, for example, you asked them did they certify that the rule didn't have a significant impact? Did they meet the regulatory flexibility analysis under U.S. Code 603? Did they convene a review panel? Did they follow the President's Executive Order 12866?

It strikes me that this questionnaire simply reflects what an agency would do anyway to determine whether they have met the requirements of law in issuing their regulation size; is that not correct?

Mr. MURPHY. Yes, they should be doing that, Mr. Chairman.

Mr. MCINTOSH. So, in fact, filling out the questionnaire is not any additional substantive burden that somebody has to spend the time checking off yeses or noes, or you have a category not applicable in certain areas, but the actual substantive thinking about whether we have done this is something that you would expect an agency official who has taken an oath to uphold the law to do.

Mr. MURPHY. We agree. We have tried to estimate how long it would take for an agency to fill out one of these, and it is not a very lengthy endeavor. I know that in talking with the former Administrator of OIRA, it was her view that the statute, Congressional Review Act, addresses information that must be provided to GAO for major rules, and that for nonmajor rules there would be such a burden by requiring additional information, that this kind of questionnaire was inappropriate.

Mr. MCINTOSH. Thank you. I appreciate it.

And then with respect to the good cause exception, and I want to tell you, I fundamentally agree with your assessment of that interpretation, isn't it the case that my floor statement the day we passed the Congressional Review Act and the joint committee statement made it absolutely clear that it does not apply when notice and comment is possible?

Mr. MURPHY. There is no question about it. The statute is not ambiguous at all. Your floor statement makes clear, other legislative history makes clear the meaning of that provision. It simply does not read as OIRA claims that it reads.

Mr. MCINTOSH. So at best they have a result-oriented interpretation. At worst they are ignoring the law as we have written it.

Mr. MURPHY. Well, the policy reason that I have heard advanced is that if agencies cannot use the good cause exception, unless they don't have enough time to go out for notice and comment, then that is going to encourage agencies to not go out for notice and comment in order to be able to assert the good cause exception and to justify it. And that thereby, by following the language of the statute, the public would be ill-served. It is not an explanation that—that immediately appeals.

Mr. MCINTOSH. It sounds somewhat—all we are saying is that you have 60 days in your planning cycle before the effective date of the regulation. And when you go through notice and comment, you plan out how many days it takes. Also a good agency will plan out how many days they think it will take to review the comments and then go through a final notice and then effective date. So that

is a bizarre policy reason, in my thinking. Well, we will take steps to reiterate that position with OIRA and with the agencies.

Let me ask you, Mr. Murphy, in the study of the rules that you have conducted, I understand there were 279 rules that even though they were published in the Federal Register as rules were not reported to Congress in time under the Congressional Review Act; is that correct?

Mr. MURPHY. That is correct.

Mr. MCINTOSH. And also as we pointed to in my opening statement, section 801 of the CRA says that no rule can legally take effect before the agency issuing the rules files the required reports; is that correct?

Mr. MURPHY. That is correct.

Mr. MCINTOSH. And I understand that GAO has contacted the agencies that were not reporting these rules and managed to get them reported—to report most of them, either after you contacted them or in that process. Did OIRA assist you in that?

Mr. MURPHY. No, we did that on our own.

Mr. MCINTOSH. OK. And as of today, there are still 13 rules that have not been reported?

Mr. MURPHY. Thirteen rules which have not been filed.

Mr. MCINTOSH. Do you have a list with you of those rules? Actually I would be interested in the list of 279 rules as well.

Mr. MURPHY. We can certainly provide the list of 279 for the record, if you would like, Mr. Chairman.

[The information referred to follows:]

Rules Untimely Filed with GAO Under the Congressional Review Act (October 1, 1996 - July 31, 1997)

March 20, 1998

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
AGENCY FOR INTERNATIONAL DEVELOPMENT	10/15/96	3/6/98	RULES ON SOURCE, ORIGIN AND NATIONALITY FOR COMMODITIES AND SERVICES FINANCED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT
AGENCY FOR INTERNATIONAL DEVELOPMENT	12/16/96	3/6/98	DONATION OF DAIRY PRODUCTS TO ASSIST NEEDY PERSONS OVERSEAS (SECTION 416 FOREIGN DONATION PROGRAM)
COMMODITY FUTURES TRADING COMMISSION	6/11/97	2/23/98	DISTRIBUTION OF CUSTOMER PROPERTY RELATED TO TRADING ON THE CHICAGO BOARD OF TRADE--LONDON INTERNATIONAL FINANCIAL FUTURES AND OPTIONS EXCHANGE TRADING LINK
CONSUMER PRODUCT SAFETY COMMISSION	12/13/96	11/24/97	SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE CONSUMER PRODUCT SAFETY COMMISSION
DOA - AGRICULTURAL RESEARCH SERVICE	10/1/96	2/20/98	CONDUCT ON BELTSVILLE AGRICULTURAL RESEARCH PROPERTY, BELTSVILLE, MARYLAND

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - AGRICULTURAL RESEARCH SERVICE	12/11/96	2/20/98	CONDUCT ON NATIONAL ARBORETUM PROPERTY
DOA - ANIMAL AND PLANT HEALTH INSPECTION SERVICE	10/15/96	3/5/98	IMPORTED FIRE ANT; APPROVED TREATMENTS
DOA - ANIMAL AND PLANT HEALTH INSPECTION SERVICE	5/2/97	2/20/98	GENETICALLY ENGINEERED ORGANISMS AND PRODUCTS; SIMPLIFICATION OF REQUIREMENTS AND PROCEDURES FOR GENETICALLY ENGINEERED ORGANISMS
DOA - FEDERAL CROP INSURANCE CORPORATION	11/7/96	2/25/98	COMMON CROP INSURANCE REGULATIONS; PEAR CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	11/19/96	2/20/98	COMMON CROP INSURANCE REGULATIONS; SUGAR BEET CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	12/30/96	2/20/98	DRY BEAN CROP INSURANCE REGULATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - FEDERAL CROP INSURANCE CORPORATION	12/31/96	2/20/98	COMMON CROP INSURANCE REGULATIONS; FLORIDA CITRUS FRUIT CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	1/29/97	2/20/98	COMMON CROP INSURANCE REGULATIONS, TEXAS CITRUS TREE CROP INSURANCE PROVISIONS; AND TEXAS CITRUS TREE ENDORSEMENT
DOA - FEDERAL CROP INSURANCE CORPORATION	2/10/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; CRANBERRY ENDORSEMENT AND COMMON CROP INSURANCE REGULATIONS; CRANBERRY CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	2/11/97	2/20/98	COMMON CROP INSURANCE REGULATIONS, DRY BEAN CROP INSURANCE PROVISIONS; AND DRY CROP INSURANCE REGULATIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	2/13/97	2/20/98	COMMON CROP INSURANCE REGULATIONS ELS COTTON CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	2/18/97	2/20/98	COMMON CROP INSURANCE REGULATIONS; COTTON CROP INSURANCE PROVISIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - FEDERAL CROP INSURANCE CORPORATION	3/14/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; RAISIN ENDORSEMENT AND COMMON CROP INSURANCE REGULATIONS; RAISIN CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	3/20/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; FORAGE SEEDING CROP INSURANCE REGULATIONS AND COMMON CROP INSURANCE REGULATIONS; FORAGE SEEDING CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	3/26/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; FORAGE PRODUCTION CROP INSURANCE REGULATIONS, AND COMMON CROP INSURANCE REGULATIONS; FORAGE PRODUCTION CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	3/28/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS, FRESH MARKET TOMATO MINIMUM VALUE OPTION, AND FRESH MARKET TOMATO (DOLLAR PLAN) ENDORSEMENT; AND COMMON CROP INSURANCE REGULATIONS, FRESH MARKET TOMATO (DOLLAR PLAN) CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	3/28/97	2/20/98	PEPPER CROP INSURANCE REGULATIONS; AND COMMON CROP INSURANCE REGULATIONS, FRESH MARKET PEPPER CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	3/28/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS, FRESH MARKET SWEET CORN ENDORSEMENT; AND COMMON CROP INSURANCE REGULATIONS, FRESH MARKET SWEET CORN CROP INSURANCE PROVISIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - FEDERAL CROP INSURANCE CORPORATION	4/25/97	2/20/98	WALNUT CROP INSURANCE REGULATIONS; AND COMMON CROP INSURANCE REGULATIONS, WALNUT CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	5/1/97	2/20/98	FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS; COMMON CROP INSURANCE REGULATIONS, GUARANTEED PRODUCTION PLAN OF FRESH MARKET TOMATO CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	5/8/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS AND ALMOND ENDORSEMENT; AND COMMON CROP INSURANCE REGULATIONS, ALMOND CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	5/16/97	2/20/98	IMPLEMENTATION OF THE BOLL WEEVIL ERADICATION LOAN PROGRAM
DOA - FEDERAL CROP INSURANCE CORPORATION	5/23/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS, RICE ENDORSEMENT; AND COMMON CROP INSURANCE REGULATIONS, RICE CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	5/27/97	2/20/98	GENERAL ADMINISTRATIVE REGULATIONS; COLLECTION AND STORAGE OF SOCIAL SECURITY ACCOUNT NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - FEDERAL CROP INSURANCE CORPORATION	5/27/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS, ONION ENDORSEMENT; AND COMMON CROP INSURANCE REGULATIONS, ONION CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	6/23/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; GRAPE ENDORSEMENT AND COMMON CROP INSURANCE REGULATIONS; GRAPE CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	6/23/97	2/20/98	GENERAL CROP INSURANCE REGULATIONS; FRESH PLUM ENDORSEMENT, AND COMMON CROP INSURANCE REGULATIONS; PLUM CROP INSURANCE PROVISIONS
DOA - FEDERAL CROP INSURANCE CORPORATION	7/2/97	3/5/98	MACADAMIA NUT CROP INSURANCE REGULATIONS
DOA - FOOD SAFETY & INSPECTION SERVICE	11/19/96	2/20/98	USE OF CORN SYRUP, CORN SYRUP SOLIDS, AND GLUCOSE SYRUP AS FLAVORING AGENTS IN MEAT PRODUCTS
DOA - FOOD SAFETY & INSPECTION SERVICE	12/13/96	2/20/98	FEE INCREASE FOR INSPECTION SERVICES

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOA - FOOD SAFETY & INSPECTION SERVICE	12/17/96	2/20/98	USE OF THE TERM "FRESH" ON THE LABELING OF RAW POULTRY PRODUCTS
DOA - FOOD SAFETY & INSPECTION SERVICE	5/22/97	2/20/98	USE OF LIQUID NITROGEN FOR CONTACT FREEZING OF MEAT AND MEAT PRODUCTS
DOA - RURAL ELECTRIFICATION ADMINISTRATION	2/18/97	2/20/98	TELECOMMUNICATIONS PROGRAM; POSTLOAN ENGINEERING SERVICES CONTRACT
DOA - SECRETARY OF AGRICULTURE	3/7/97	2/20/98	EXPORT SALES REPORTING FOR SUNFLOWERSEED OIL
DOA - SECRETARY OF AGRICULTURE	7/31/97	2/20/98	DEPARTMENT OF AGRICULTURE CIVIL MONETARY PENALTIES ADJUSTMENT
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	11/20/96	12/1/97	FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA; ALLOCATIONS OF PACIFIC COD IN THE BERING SEA AND ALEUTIAN ISLANDS AREA; DOCKET 960815223-6315-02

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	12/2/96	12/1/97	FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA; GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA; ELECTRONIC REPORTING
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	12/26/96	12/1/97	FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA; INDIVIDUAL FISHING QUOTA PROGRAM; SWEEP-UP ADJUSTMENTS, DOCKET 960918264-6350-02; I.D. 091296A
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	2/26/97	12/12/97	ATLANTIC TUNA FISHERIES; REGULATORY ADJUSTMENTS; DOCKET NO 960416112-7026-05, I.D. 020597C
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	4/4/97	3/18/98	NORTH ATLANTIC RIGHT WHALE PROTECTION; EMERGENCY REGULATIONS
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	4/7/97	11/26/97	ATLANTIC SHARK FISHERIES; QUOTAS, BAG LIMITS, PROHIBITIONS, AND REQUIREMENTS; DOCKET NO. 961211348-7065-03
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	5/15/97	12/1/97	FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA; CORRECTION; DOCKET 961119321-02

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	5/20/97	12/12/97	ATLANTIC TUNA FISHERIES; REGULATORY ADJUSTMENTS; DOCKET NO 960816226-7115-02, I.D. 050797B
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	6/19/97	3/2/98	MARINE MAMMALS; SUBSISTENCE TAKING OF NORTHERN FUR SEALS; HARVEST ESTIMATES
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	7/9/97	8/22/97	FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA, PACIFIC OCEAN PERCH IN THE CENTRAL REGULATORY AREA OF THE GULF OF ALASKA
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	7/18/97	12/12/97	ATLANTIC TUNA FISHERIES; REGULATORY ADJUSTMENTS; DOCKET NO. 960816226-7172-05, I.D. 061897C
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	7/21/97	12/12/97	ATLANTIC TUNA FISHERIES; ATLANTIC BLUEFIN TUNA EFFORT CONTROLS
DOD - DEPARTMENT OF DEFENSE	1/17/97	9/3/97	PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS IN OVERSEAS AREAS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOD - SECRETARY OF DEFENSE	11/29/96	2/26/98	SCHOOL BOARDS FOR DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS
DOE - DEPARTMENT OF ENERGY	4/28/97	8/26/97	DEPARTMENT OF ENERGY: ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS: ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS AND FREEZERS
DOI - BUREAU OF INDIAN AFFAIRS	10/21/96	1/13/98	PROTECTION FOR PRODUCTS OF INDIAN ART AND CRAFTSMANSHIP
DOI - BUREAU OF INDIAN AFFAIRS	11/22/96	2/26/98	INDIAN FISHING - HOOPA VALLEY INDIAN RESERVATION
DOI - BUREAU OF LAND MANAGEMENT	10/16/96	1/9/98	FEDERAL TIMBER CONTRACT PAYMENT MODIFICATION
DOI - MINERALS MANAGEMENT SERVICE	5/22/97	12/24/97	SURETY BONDS FOR OUTER CONTINENTAL SHELF LEASES

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOI - OFFICE OF SURFACE MINING RECLAMATION & ENFORCEMENT	4/29/97	2/24/98	TEXAS REGULATORY PROGRAM
DOI - UNITED STATES FISH AND WILDLIFE SERVICE	4/24/97	1/22/98	DISPOSITION OF SURPLUS RANGE ANIMALS
DOI - UNITED STATES FISH AND WILDLIFE SERVICE	5/7/97	1/22/98	1997 MIGRATORY BIRD HUNTING AND CONSERVATION STAMP (FEDERAL DUCK STAMP) CONTEST
DOI - UNITED STATES FISH AND WILDLIFE SERVICE	6/5/97	1/22/98	ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATED PORTS FOR LISTED PLANTS
DOJ - DEPARTMENT OF JUSTICE	6/25/97	2/17/98	EXEMPTION OF RECORDS SYSTEMS UNDER THE PRIVACY ACT
DOJ - DRUG ENFORCEMENT ADMINISTRATION	10/7/96	3/2/98	REMOVAL OF EXEMPTION FOR CERTAIN PSEUDOEPHEDRINE PRODUCTS MARKETED UNDER THE FOOD, DRUG, AND COSMETIC ACT (FD&C ACT)

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOJ - DRUG ENFORCEMENT ADMINISTRATION	11/5/96	3/2/98	SCHEDULE OF CONTROLLED SUBSTANCES: PLACEMENT OF REMIFENTANIL INTO SCHEDULE II
DOJ - DRUG ENFORCEMENT ADMINISTRATION	12/30/96	3/2/98	REGISTRATION AND REREGISTRATION APPLICATION FEES
DOJ - DRUG ENFORCEMENT ADMINISTRATION	5/21/97	3/2/98	TEMPORARY EXEMPTION FROM CHEMICAL REGISTRATION FOR DISTRIBUTORS OF COMBINATION EPHEDRINE PRODUCTS; EXTENSION OF APPLICATION DEADLINE
DOJ - DRUG ENFORCEMENT ADMINISTRATION	5/30/97	3/2/98	SCHEDULES OF CONTROLLED SUBSTANCES: EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS
DOJ - DRUG ENFORCEMENT ADMINISTRATION	5/30/97	3/2/98	SCHEDULES OF CONTROLLED SUBSTANCES: EXEMPT ANABOLIC STEROID PRODUCTS
DOJ - IMMIGRATION AND NATURALIZATION SERVICE	11/25/96	3/5/98	PERIODS OF LAWFUL TEMPORARY RESIDENT STATUS AND LAWFUL PERMANENT RESIDENT STATUS TO ESTABLISH SEVEN YEARS OF LAWFUL DOMICILE

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOJ - IMMIGRATION AND NATURALIZATION SERVICE	12/31/96	12/2/97	ADMINISTRATIVE DEPORTATION PROCEDURES FOR ALIENS CONVICTED OF AGGRAVATED FELONIES WHO ARE NOT LAWFUL PERMANENT RESIDENTS
DOL - OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION	11/25/96	3/6/98	SAFETY STANDARDS FOR SCAFFOLDS USED IN THE CONSTRUCTION INDUSTRY; CORRECTION
DOT - FEDERAL AVIATION ADMINISTRATION	10/2/96	12/18/97	AMENDMENT OF CLASS D AIRSPACE; JACKSONVILLE, CRAIG MUNICIPAL AIRPORT, FL; AIRSPACE DOCKET NO. 96-ASO-21
DOT - FEDERAL AVIATION ADMINISTRATION	10/16/96	12/18/97	PROHIBITION AGAINST CERTAIN FLIGHTS WITHIN THE TERRITORY AND AIRSPACE OF IRAQ; DOCKET NO. 28691, SFAR NO. 77
DOT - FEDERAL AVIATION ADMINISTRATION	10/16/96	12/18/97	ESTABLISHMENT OF CLASS E AIRSPACE; NUIQSUT, AK; AIRSPACE DOCKET NO. 96-AAL-10
DOT - FEDERAL AVIATION ADMINISTRATION	10/28/96	12/18/97	ESTABLISHMENT OF CLASS E AIRSPACE; DEXTER, ME; DOCKET NO. 96-ANE-23

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	11/6/96	12/18/97	AIRWORTHINESS DIRECTIVES; BELL HELICOPTER TEXTRON, A DIVISION OF TEXTRON CANADA, LTD. MODEL 206L HELICOPTERS; DOCKET NO. 95-SW-35-AD, AMENDMENT 39-9806, AD 96-23-01
DOT - FEDERAL AVIATION ADMINISTRATION	11/6/96	12/18/97	AIRWORTHINESS DIRECTIVES; BOEING MODEL 737-100 AND -200 SERIES AIRPLANES, AND MODEL 747-100, -200, -300, AND -SP SERIES AIRPLANES; DOCKET NO. 96-NM-36-AD, AMENDMENT 39-9799, AD 96-22-11
DOT - FEDERAL AVIATION ADMINISTRATION	11/19/96	12/18/97	AMENDMENT TO CLASS D AIRSPACE, KNOB NOSTER, MO; DOCKET NO. 96-ACE-13
DOT - FEDERAL AVIATION ADMINISTRATION	11/20/96	12/18/97	AIRWORTHINESS DIRECTIVES; AIR TRACTOR, INC. AT-300, AT-400, AND AT-500 SERIES AIRPLANES; DOCKET NO. 96-CE-55-AD
DOT - FEDERAL AVIATION ADMINISTRATION	11/20/96	12/18/97	AIRWORTHINESS DIRECTIVES; FOKKER MODEL F28 MARK 0070 AND 0100 SERIES AIRPLANES; DOCKET NO. 96-NM-262-AD
DOT - FEDERAL AVIATION ADMINISTRATION	11/22/96	12/18/97	REALIGNMENT OF JET ROUTE J-522

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	12/17/96	12/18/97	AIRWORTHINESS DIRECTIVES; BOEING MODEL 747 SERIES AIRPLANES; DOCKET NO. 96-NM-249-AD
DOT - FEDERAL AVIATION ADMINISTRATION	1/3/97	12/18/97	AMENDMENT TO CLASS E AIRSPACE, STAUNTON, VA; AIRSPACE DOCKET NO. 96-AEA-11
DOT - FEDERAL AVIATION ADMINISTRATION	1/29/97	12/18/97	AIRWORTHINESS DIRECTIVES; GLASFLUGEL MODELS H301 "LIBELLE," H301B "LIBELLE," STANDARD "LIBELLE," STANDARD LIBELLE 201B, CLUB LIBELLE 205, AND KESTREL AIRPLANES
DOT - FEDERAL AVIATION ADMINISTRATION	2/4/97	12/18/97	STANDARD INSTRUMENT APPROACH PROCEDURES; MISCELLANEOUS AMENDMENTS; DOCKET NO. 28785, AMDT. NO. 1779
DOT - FEDERAL AVIATION ADMINISTRATION	2/13/97	12/18/97	AMENDMENT TO CLASS E AIRSPACE; HUDSON, NY; AIRSPACE DOCKET NO. 96-AEA-12
DOT - FEDERAL AVIATION ADMINISTRATION	2/14/97	12/18/97	AIRWORTHINESS DIRECTIVES; BOEING MODEL 737 SERIES AIRPLANES; DOCKET NO. 96-NM-153-AD, AMENDMENT 39-9925, AD 97-04-01

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; AIRBUS MODEL A300-600 AND A310 SERIES AIRPLANES EQUIPPED WITH PRE-MODIFICATION 5844D4829 RUDDERS; DOCKET 96-NM-65-AD
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; AEROSPATIALE MODEL ATR42-200, -300 AND -320 SERIES AIRPLANES; DOCKET NO. 97-NM-30-AD, AMENDMENT 39-9939, AD 97-04-14
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; McDONNELL DOUGLAS MODEL DC-9-80 SERIES AIRPLANES, MODEL MD-88 AIRPLANES, MODEL MD-90 AIRPLANES; DOCKET NO. 96-NM-217-AD, AMENDMENT 39-9934, AD 97-04-10
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; FOKKER MODEL F27; DOCKET NO. 96-NM-32-AD
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; ALLIEDSIGNAL INC. GTCP85 SERIES AUXILIARY POWER UNITS; DOCKET NO. 96-ANE-15
DOT - FEDERAL AVIATION ADMINISTRATION	2/21/97	12/18/97	AIRWORTHINESS DIRECTIVES; DORNIER MODEL 328-100 SERIES AIRPLANES; DOCKET NO. 96-NM-118-AD

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	2/26/97	12/18/97	AIRWORTHINESS DIRECTIVES; ALLIEDSIGNAL AVIONICS, INC. MODEL GNS-XLS AND GNS-XL FLIGHT MANAGEMENT SYSTEMS; DOCKET NO. 97-CE-07-AD, AMENDMENT 39-9947, AD 97-05-03
DOT - FEDERAL AVIATION ADMINISTRATION	2/27/97	12/18/97	AIRWORTHINESS DIRECTIVES; PRATT & WHITNEY CANADA PT6 SERIES TURBOPROP ENGINES; DOCKET NO. 97-ANE-01, AMENDMENT 39-9936, AD 97-04-12
DOT - FEDERAL AVIATION ADMINISTRATION	2/28/97	12/18/97	AIRWORTHINESS DIRECTIVES; LOCKHEED MODEL 382 SERIES AIRPLANES; DOCKET NO. 96-NM-35-AD
DOT - FEDERAL AVIATION ADMINISTRATION	3/3/97	12/18/97	AIRWORTHINESS DIRECTIVES; BOEING MODEL 727 SERIES AIRPLANES; DOCKET NO. 97-NM-32-AD
DOT - FEDERAL AVIATION ADMINISTRATION	4/4/97	12/18/97	AIRWORTHINESS DIRECTIVES; McCAULEY PROPELLER SYSTEMS 1A103/TCM SERIES PROPELLERS; DOCKET NO. 97-ANE-06, AMENDMENT 39-9973, AD 97-06-16
DOT - FEDERAL AVIATION ADMINISTRATION	4/9/97	12/18/97	REMOVAL OF CLASS D AIRSPACE, MARSHALL ARMY AIRFIELD, FT. RILEY, KS; DOCKET NO. 97-ACE-5

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	4/25/97	12/18/97	AIRWORTHINESS DIRECTIVES; BOEING MODEL 757 SERIES AIRPLANES; DOCKET NO. 97-NM-73-AD, AMENDMENT 39-10002, AD 97-09-06
DOT - FEDERAL AVIATION ADMINISTRATION	5/1/97	12/18/97	AIRWORTHINESS DIRECTIVES; CFM INTERNATIONAL CFM56 -5C SERIES TURBOFAN ENGINES; DOCKET NO. 95-ANE-64
DOT - FEDERAL AVIATION ADMINISTRATION	5/9/97	12/18/97	REVISIONS OF CLASS E AIRSPACE; KLAWOCK, AK
DOT - FEDERAL AVIATION ADMINISTRATION	5/15/97	12/18/97	AIRWORTHINESS DIRECTIVES; RAYTHEON AIRCRAFT COMPANY MODEL 1900D AIRPLANES (FORMERLY BEECH AIRCRAFT CORPORATION); DOCKET NO. 96-CE-27-AD, AMENDMENT 39-10026, AD 97-10-14
DOT - FEDERAL AVIATION ADMINISTRATION	5/22/97	12/18/97	AIRWORTHINESS DIRECTIVES; McDONNELL DOUGLAS MODEL MD-90-30 AIRPLANES; DOCKET NO. 96-NM-201-AD, AMENDMENT 39-10036, AD 97-11-07
DOT - FEDERAL AVIATION ADMINISTRATION	5/22/97	12/18/97	AIRWORTHINESS DIRECTIVES; BOMBARDIER MODEL CL-415 SERIES AIRPLANES; DOCKET NO. 97-NM-31-AD, AMENDMENT 39-10037, AD 97-11-08

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	5/23/97	12/18/97	AIRWORTHINESS DIRECTIVES; JETSTREAM AIRCRAFT LIMITED HP137 Mk1, JETSTREAM SERIES 200, AND JETSTREAM MODELS 3101 AND 3201 AIRPLANES; DOCKET NO. 96-CE-44-AD, AMENDMENT 39-10017, AD 97-10-05
DOT - FEDERAL AVIATION ADMINISTRATION	5/29/97	12/18/97	AIRWORTHINESS DIRECTIVES; PURITAN BENNETT AERO SYSTEMS COMPANY SERIES 174290 CONSTANT AIR FLOW AIRLINE PORTABLE OXYGEN MASKS, PART NUMBERS 174290-14, 174290-24, 174290-34, 174290-44, AND 174290-54; DOCKET NO. 97-CE-31-AD, AMENDMENT 39-10039, AD 97-11-10
DOT - FEDERAL AVIATION ADMINISTRATION	7/3/97	12/18/97	AIRWORTHINESS DIRECTIVES; DIAMOND AIRCRAFT INDUSTRIES, INC. MODEL DA 20-A1 AIRPLANES, SERIAL NUMBERS 10002 AND 10297; DOCKET NO. 97-CE-36-AD
DOT - FEDERAL AVIATION ADMINISTRATION	7/11/97	12/18/97	AIRWORTHINESS DIRECTIVES; RAYTHEON AIRCRAFT COMPANY (FORMERLY BEECH AIRCRAFT CORPORATION) MODEL 1900D AIRPLANES; DOCKET NO. 97-CE-47-AD, AMENDMENT 39-10074, AD 97-14-16
DOT - FEDERAL AVIATION ADMINISTRATION	7/11/97	12/18/97	AIRWORTHINESS DIRECTIVES; GULFSTREAM AEROSPACE CORPORATION MODEL G-159(G-I) AIRPLANES; DOCKET NO. 97-NM-19-AD AMENDMENT 39-10069, AD 97-14-13
DOT - FEDERAL AVIATION ADMINISTRATION	7/17/97	12/18/97	REVISION OF CLASS E AIRSPACE; PERRY, OK; AIRSPACE DOCKET NO. 96-ASW-22

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - FEDERAL AVIATION ADMINISTRATION	7/17/97	12/18/97	RE'/ISION OF CLASS E AIRSPACE; SOCORRO, NM; AIRSPACE DOCKET NO 96-ASW-23
DOT - FEDERAL AVIATION ADMINISTRATION	7/17/97	12/18/97	RE'/ISION OF CLASS E AIRSPACE; JASPER, TX; AIRSPACE DOCKET NO. 96-.\SW-24
DOT - FEDERAL AVIATION ADMINISTRATION	7/17/97	12/18/97	EST'ABLISHMENT OF CLASS E AIRSPACE; MANILA, AR
DOT - FEDERAL AVIATION ADMINISTRATION	7/18/97	12/18/97	AIRWORTHINESS DIRECTIVES; (44) McDONNELL DOUGLAS HEL.ICOPTER
DOT - FEDERAL AVIATION ADMINISTRATION	11/22/97	12/18/97	AIRWORTHINESS DIRECTIVES:(7) HOAC AUSTRIA MODEL DV-20- DOCKET NO. 95-CE-62
DOT - NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION	3/10/97	12/18/97	FEDERAL MOTOR VEHICLE SAFETY STANDARDS; LAMPS, REFLECTIVE DEVICES AND ASSOCIATED EQUIPMENT; DOCKET NO. 95-:!8, NOTICE 10

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION	6/26/97	12/18/97	UNIFORM PROCEDURES FOR THE STATE HIGHWAY SAFETY PROGRAMS; NHTSA DOCKET NO. 93-55, NOTICE 5
DOT - RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION	10/1/96	12/18/97	REVISION OF MISCELLANEOUS HAZARDOUS MATERIALS REGULATIONS; REGULATORY REVIEW; RESPONSES TO PETITIONS FOR RECONSIDERATION
DOT - RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION	11/27/96	12/18/97	CONTROL OF DRUG USE AND ALCOHOL MISUSE IN NATURAL GAS, LIQUEFIED NATURAL GAS, AND HAZARDOUS LIQUID PIPELINE OPERATIONS ALCOHOL MISUSE PREVENTION PROGRAM;
DOT - UNITED STATES COAST GUARD	10/11/96	12/18/97	REGATTA REGULATIONS; SPECIAL LOCAL REGULATION; BIG RIVER RENDEZVOUS MISSISSIPPI RIVER MILE 483.0 - 493.0; CGD08-96-041
DOT - UNITED STATES COAST GUARD	2/4/97	12/18/97	DRAWBRIDGE REGULATIONS; MISSISSIPPI RIVER, IOWA AND ILLINOIS (08-96-06)
DOT - UNITED STATES COAST GUARD	2/14/97	12/18/97	DRAWDRIDGE OPERATION REGULATIONS; STURGEON BAY, WI; CGD09-94-029

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
DOT - UNITED STATES COAST GUARD	2/21/97	12/18/97	SPECIAL LOCAL REGULATIONS; INVITATIONAL ROWING REGATTA, AUGUSTA, GA.
EDUC - DEPARTMENT OF EDUCATION	11/19/96	2/23/98	STUDENT ASSISTANCE GENERAL PROVISIONS, FEDERAL PERKINS LOAN, FEDERAL WORK-STUDY, FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT, FEDERAL FAMILY EDUCATION LOAN, WILLIAM D. FORD FEDERAL DIRECT LOAN, AND FEDERAL PELL GRANT PROGRAMS
ENVIRONMENTAL PROTECTION AGENCY	10/7/96	12/11/97	BENZIDINE-BASED CHEMICAL SUBSTANCES; SIGNIFICANT NEW USES OF CERTAIN CHEMICAL SUBSTANCES
ENVIRONMENTAL PROTECTION AGENCY	10/8/96	12/11/97	NATIONAL AMBIENT AIR QUALITY STANDARDS FOR NITROGEN DIOXIDE: FINAL RULE
ENVIRONMENTAL PROTECTION AGENCY	10/24/96	12/11/97	ACQUISITION REGULATION; REMOVAL OF OUTDATED OR UNNECESSARY COVERAGE
ENVIRONMENTAL PROTECTION AGENCY	10/29/96	12/11/97	PRELIMINARY ASSESSMENT INFORMATION AND HEALTH AND SAFETY DATA REPORTING; ADDITION OF CHEMICALS; FINAL RULE

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
ENVIRONMENTAL PROTECTION AGENCY	12/23/96	12/11/97	SODIUM BICARBONATE AND POTASSIUM BACARBONATE; TOLERANCE EXEMPTIONS
ENVIRONMENTAL PROTECTION AGENCY	12/31/96	12/11/97	SOLID WASTE PROGRAMS; MANAGEMENT GUIDELINES FOR BEVERAGE CONTAINERS AND RESOURCE RECOVERY FACILITIES; REMOVAL OF OBSOLETE GUIDELINES
ENVIRONMENTAL PROTECTION AGENCY	2/5/97	12/11/97	ACQUISITION REGULATION: LIMITATION OF FUTURE CONTRACTING
ENVIRONMENTAL PROTECTION AGENCY	2/20/97	12/11/97	ZINC PHOSPHIDE; PESTICIDE TOLERANCES FOR EMERGENCY EXEMPTIONS
ENVIRONMENTAL PROTECTION AGENCY	2/24/97	12/11/97	CREDIBLE EVIDENCE REVISIONS
ENVIRONMENTAL PROTECTION AGENCY	5/30/97	12/11/97	FINAL AUTHORIZATION OF STATE HAZARDOUS WASTE MANAGEMENT PROGRAM; MISSOURI

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
ENVIRONMENTAL PROTECTION AGENCY	6/2/97	12/11/97	APPROVAL AND PROMULGATION OF AIR QUALITY IMPLEMENTATION PLANS; DISTRICT OF COLUMBIA; INTERIM FINAL DETERMINATION FOR APPROVAL OF THE DISTRICT OF COLUMBIA NEW SOURCE REVIEW SUBMITTAL
ENVIRONMENTAL PROTECTION AGENCY	6/9/97	12/11/97	APPROVAL AND PROMULGATION OF AIR QUALITY IMPLEMENTATION PLANS; PENNSYLVANIA; 15 PERCENT PLAN AND 1990 VOC EMISSION INVENTORY FOR THE PHILADELPHIA
ENVIRONMENTAL PROTECTION AGENCY	6/9/97	12/11/97	APPROVAL AND PROMULGATION OF AIR QUALITY IMPLEMENTATION PLANS; UTAH; IMPROVED MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM
ENVIRONMENTAL PROTECTION AGENCY	7/2/97	12/11/97	REVOCATION OF SIGNIFICANT NEW USE RULES FOR CERTAIN CHEMICAL SUBSTANCES
ENVIRONMENTAL PROTECTION AGENCY	7/2/97	12/11/97	ALIPHATIC ESTER; REVOCATION OF A SIGNIFICANT NEW USE RULE
FEDERAL COMMUNICATIONS COMMISSION	10/24/96	2/27/98	RADIO BROADCASTING SERVICES; SAN ANGELO, TEXAS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL COMMUNICATIONS COMMISSION	10/24/96	2/27/98	AMENDMENT OF SECTION 73.202(b), TABLE OF ALLOTMENTS, FM BROADCAST STATIONS. (NEGAUNEE, MICHIGAN)
FEDERAL COMMUNICATIONS COMMISSION	12/13/96	2/27/98	AMENDMENT OF SECTION 73.202(b), TABLE OF ALLOTMENTS, FM BROADCAST STATIONS. (BARRON AND RICE LAKE, WISCONSIN)
FEDERAL COMMUNICATIONS COMMISSION	1/6/97	3/9/98	GEOGRAPHIC PARTITIONING AND SPECTRUM DISAGGREGATION OF COMMERCIAL MOBILE RADIO SERVICES LICENSEES; AND IMPLEMENTATION OF SECTION 257 OF THE COMMUNICATIONS ACT; ELIMINATION OF MARKETING ENTRY BARRIERS
FEDERAL COMMUNICATIONS COMMISSION	2/14/97	2/27/98	AMENDMENT OF SECTION 73.202(b), TABLE OF ALLOTMENTS, FM BROADCAST STATIONS. (BOONVILLE, MISSOURI)
FEDERAL COMMUNICATIONS COMMISSION	3/18/97	3/9/98	AMENDMENT TO THE COMMISSION'S RULES REGARDING A PLAN FOR SHARING THE COSTS OF MICROWAVE RELOCATION
FEDERAL COMMUNICATIONS COMMISSION	4/17/97	2/25/98	PRIVATE LAND MOBILE RADIO SERVICES

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL COMMUNICATIONS COMMISSION	4/22/97	3/17/98	AMENDMENT OF SECTION 2.106 OF THE COMMISSION'S RULES TO ALLOCATE SPECTRUM AT 2 GHz FOR USE BY THE MOBILE-SATELLITE SERVICE
FEDERAL COMMUNICATIONS COMMISSION	5/20/97	3/9/98	NARROWBAND PERSONAL COMMUNICATIONS SERVICES
FEDERAL COMMUNICATIONS COMMISSION	7/28/97	2/25/98	MARITIME AND AVIATION COMMUNICATIONS
FEDERAL COMMUNICATIONS COMMISSION	7/31/97	9/29/97	FUTURE DEVELOPMENT OF SMR SYSTEMS IN THE 800 MHZ FREQUENCY BAND; SECOND REPORT AND ORDER
FEDERAL ELECTION COMMISSION	11/15/96	2/24/98	ELECTRONIC FILING OF REPORTS BY POLITICAL COMMITTEES
FEDERAL ELECTION COMMISSION	3/12/97	2/24/98	ADJUSTMENTS TO CIVIL MONETARY PENALTY AMOUNTS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/1/96	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/1/96	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/1/96	3/2/98	NATIONAL FLOOD INSURANCE PROGRAM; AUDIT PROGRAM REVISION
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/21/96	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/21/96	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/21/96	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	10/21/96	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	11/6/96	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	11/22/96	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	11/26/96	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	11/26/96	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	11/26/96	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	1/13/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	1/13/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	1/22/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	1/22/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	1/22/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	2/6/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	2/14/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	2/14/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	2/14/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	2/24/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	3/2/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	3/3/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	3/4/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	3/20/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	3/20/97	3/2/98	FLOOD MITIGATION ASSISTANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/4/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/4/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/4/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/22/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/29/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/29/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	4/29/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	5/5/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	5/12/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	5/20/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/3/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/3/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/3/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/10/97	3/2/98	SUSPENSION OF COMMUNITY ELIGIBILITY
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/18/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/18/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	6/20/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/15/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/15/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/22/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/22/97	3/2/98	FINAL FLOOD ELEVATION DETERMINATIONS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/22/97	3/2/98	CHANGES IN FLOOD ELEVATION DETERMINATIONS
FEDERAL EMERGENCY MANAGEMENT AGENCY	7/31/97	3/2/98	LIST OF COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE
FEDERAL LABOR RELATIONS AUTHORITY	7/31/97	3/10/98	UNFAIR LABOR PRACTICE PROCEEDINGS: MISCELLANEOUS AND GENERAL REQUIREMENTS
FEDERAL MARITIME COMMISSION	12/9/96	2/24/98	INFORMATION FORM AND POST-EFFECTIVE REPORTING REQUIREMENTS FOR AGREEMENTS AMONG OCEAN COMMON CARRIERS SUBJECT TO THE SHIPPING ACT OF 1984
FEDERAL RESERVE SYSTEM	3/20/97	3/4/98	REGULATION O: LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS; LOANS TO HOLDING COMPANIES AND AFFILIATES
FEDERAL TRADE COMMISSION	2/6/97	3/4/98	CONCERNING TRADE REGULATION RULE ON CARE LABELING OF TEXTILE WEARNG APPAREL AND CERTAIN PIECE GOODS; CONDITIONAL EXEMPTION FROM TERMINOLOGY SECTION OF THE CARE LABELING RULE

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
HHS - CENTERS FOR DISEASE CONTROL AND PREVENTION	5/12/97	3/13/98	MEDICARE, MEDICAID, AND CLIA PROGRAMS; CLINICAL LABORATORY REQUIREMENTS--EXTENSION OF CERTAIN EFFECTIVE DATES FOR CLINICAL LABORATORY REQUIREMENTS UNDER CLIA
HHS - FOOD AND DRUG ADMINISTRATION	12/3/96	1/20/98	LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION FERROUS LECTATE; CONFIRMATION OF EFFECTIVE DATE (DOCKET NO. 93G-0017)
HHS - FOOD AND DRUG ADMINISTRATION	12/30/96	1/20/98	INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS (DOCKET NO. 96F-0101)
HHS - FOOD AND DRUG ADMINISTRATION	4/28/97	1/20/98	INDIRECT FOOD ADDITIVES; POLYMERS (DOCKET NO. 96F-0213)
HHS - FOOD AND DRUG ADMINISTRATION	7/29/97	8/19/97	HUMAN TISSUE INTENDED FOR TRANSPLANTATION
HHS - HEALTH CARE FINANCING ADMINISTRATION	4/30/97	3/13/98	MEDICARE PROGRAM; ESTABLISHMENT OF AN EXPEDITED REVIEW PROCESS FOR MEDICARE BENEFICIARIES ENROLLED IN HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
HHS - OFFICE OF INSPECTOR GENERAL	2/19/97	3/17/98	MEDICARE AND STATE HEALTH CARE PROGRAMS: FRAUD AND ABUSE; ISSUANCE OF ADVISORY OPINIONS BY THE OIG
HHS - OFFICE OF INSPECTOR GENERAL	4/29/97	3/17/98	HEALTH CARE PROGRAMS: FRAUD AND ABUSE; REVISED PRO SANCTIONS FOR FAILING TO MEET STATUTORY OBLIGATIONS
HHS - PUBLIC HEALTH SERVICE	12/13/96	3/17/98	GRANTS FOR THE CONSTRUCTION OF TEACHING FACILITIES FOR HEALTH PROFESSIONS PERSONNEL
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	10/7/96	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	10/29/96	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	10/29/96	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	12/9/96	3/2/98	ADDITION OF COVERAGE TO NASA FAR SUPPLEMENT (NFS) ON NASA SHARED SAVINGS CLAUSE
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	1/23/97	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	1/30/97	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	2/12/97	3/5/98	DUTY-FREE ENTRY OF SPACE ARTICLES
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	3/11/97	3/2/98	NASA FAR SUPPLEMENT; PROTESTS TO THE AGENCY
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	3/25/97	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	5/5/97	3/2/98	REVISION TO THE NASA FAR SUPPLEMENT TO DELETE CLASS DEVIATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	7/7/97	3/2/98	QUICK-CLOSEOUT PROCEDURES
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	7/9/97	3/2/98	REWRITE OF THE NASA FAR SUPPLEMENT (NFS)
NATIONAL ARCHIVES & RECORDS SERVICE	12/27/96	12/2/97	PRICES AND AVAILABILITY OF FEDERAL REGISTER PUBLICATIONS; ACCEPTANCE OF DIGITAL SIGNATURES
NATIONAL CREDIT UNION ADMINISTRATION	11/6/96	2/18/98	CIVIL MONETARY PENALTY INFLATION ADJUSTMENT
NATIONAL CREDIT UNION ADMINISTRATION	11/27/96	2/18/98	SHARE INSURANCE AND APPENDIX

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
PENSION BENEFIT GUARANTY CORP.	12/13/96	3/18/98	DISCLOSURE TO PARTICIPANTS; BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS
PENSION BENEFIT GUARANTY CORP.	12/13/96	3/18/98	ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; INTEREST ASSUMPTIONS FOR VALUING BENEFITS
SOCIAL SECURITY ADMINISTRATION	12/13/96	2/27/98	HEARINGS AND APPEALS FOR CIVIL MONETARY PENALTY CASES
SOCIAL SECURITY ADMINISTRATION	1/3/97	2/27/98	SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; CHARGING ADMINISTRATION FEES FOR MAKING STATE SUPPLEMENTARY PAYMENTS; INTEREST CHARGING ON STATE SUPPLEMENTARY PAYMENT FUNDS
SOCIAL SECURITY ADMINISTRATION	6/5/97	2/27/98	SUPPLEMENTARY SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; RELIABLE INFORMATION WHICH IS CURRENTLY AVAILABLE FOR DETERMINING BENEFIT AMOUNTS IN THE SUPPLEMENTAL SECURITY INCOME PROGRAM
SOCIAL SECURITY ADMINISTRATION	6/6/97	2/27/98	SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; TECHNICAL CHANGES TO TITLE XVI

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
TREAS - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS	10/17/96	2/23/98	MANUFACTURE OF CIGARETTE PAPERS AND TUBES AND RECODIFICATION OF REGULATIONS COVERING MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES (88D001)
TREAS - DEPARTMENT OF TREASURY	11/25/96	2/25/98	BANK ENTERPRISE AWARD PROGRAM
TREAS - INTERNAL REVENUE SERVICE	12/12/96	11/20/97	METHODS OF SIGNING
TREAS - INTERNAL REVENUE SERVICE	12/27/96	11/20/97	TREATMENT OF SHAREHOLDERS OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES; REG-209054-87
TREAS - OFFICE OF THE COMPTROLLER OF THE CURRENCY	10/4/96	11/18/97	SALES OF CREDIT LIFE INSURANCE
TREAS - OFFICE OF THRIFT SUPERVISION	10/31/96	11/25/97	CIVIL MONETARY PENALTY INFLATION ADJUSTMENT; 96-102.

AGENCY NAME	FED REG DATE	GAO REC DATE	RULE TITLE
TREAS - U.S. CUSTOMS SERVICE	2/13/97	2/20/98	ESTABLISHMENT OF PORT OF ENTRY AT SPIRIT OF ST. LOUIS AIRPORT
TREAS - U.S. CUSTOMS SERVICE	7/11/97	2/20/98	CUSTOMS SERVICE FIELD ORGANIZATION; ESTABLISHMENT OF SANFORD PORT OF ENTRY; T.D. 97-64

Rules Not Filed with GAO Under the Congressional Review Act (October 1, 1996 - July 31, 1997)

March 20 1998

Agency	Fed Reg Dat	Rule Title
DEPARMENT OF COMMERCE	10/22/96	CIVIL ENFORCEMENT PROCEEDINGS: OPPORTUNITY FOR AN IN-PERSON HEARING
DEPARMENT OF COMMERCE	5/19/97	ANTIDUMPING DUTIES; COUNTERVAILING DUTIES
DEPARTMENT OF STATE	10/10/96	BUREAU OF CONSULAR AFFAIRS; VISAS DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED; APPLICATION FOR NONIMMIGRANT VISA--OLYMPIC PROCEDURES
DEPARTMENT OF STATE	12/30/96	AMENDMENT TO THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS
DEPARTMENT OF STATE	7/11/97	AMENDMENT TO THE LIST OF PROSCRIBED DESTINATIONS
DOC - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	1/3/97	CAPITAL CONSTRUCTION FUND: INTERIM FISHING VESSEL CAPITAL CONSTRUCTION FUND PROCEDURES
NATIONAL SCIENCE FOUNDATION	11/20/96	ANTARCTICA; ADJUSTMENT OF CIVIL MONETARY PENALTIES

Agency	Fed Reg Dat	Rule Title
SMALL BUSINESS ADMINISTRATION	1/3/97	BUSINESS LOANS
SMALL BUSINESS ADMINISTRATION	3/12/97	SMALL BUSINESS SIZE REGULATIONS; AFFILIATION WITH INVESTMENT COMPANIES
SMALL BUSINESS ADMINISTRATION	3/12/97	SMALL BUSINESS INVESTMENT COMPANIES
SMALL BUSINESS ADMINISTRATION	4/2/97	BUSINESS LOAN PROGRAMS
SMALL BUSINESS ADMINISTRATION	4/30/97	SMALL BUSINESS INVESTMENT COMPANIES
SMALL BUSINESS ADMINISTRATION	7/1/97	DISASTER LOAN PROGRAM

Mr. MURPHY. I do have a list of the rules that have currently not been filed yet.

Mr. MCINTOSH. Could you read that list for me?

Mr. MURPHY. There are two from the Department of Commerce, one on civil enforcement proceedings and one on antidumping duties; one from NOAA, the National Oceanographic Atmospheric Administration, on capital construction fund, interim fishing vessel capital construction; National Science Foundation has one on Antarctica; the Small Business Administration has six, on business loans, small business investment companies, disaster loan programs. We have had some difficulty getting an opportunity to talk—our communication with SBA has not been very open. We have had some difficulty reaching the people who would take care of this problem. We have faxed the information to them, but they haven't filed them yet.

The State Department has two rules, Bureau of Consular Affairs, visa documentation, and amendment to the international traffic and arms regulations—actually three rules from the State Department; also an amendment to the proscribed destinations. And as I said earlier, one agency, AID, has filed two rules that were outstanding with us yesterday.

Mr. MCINTOSH. And I do very much appreciate your effort to try to communicate to the agencies the urgency and necessity of filing these rules. That one Small Business Administration rule on disaster relief, and I don't know what the content of it is, but what we are hearing today is that whatever that rule provides isn't legally binding because the agency has failed to take the step to notify Congress about that rule.

Mr. MURPHY. The rule is not effective if it hasn't been filed.

Mr. MCINTOSH. That is very disturbing to me. We heard from the witness today, and the story I mentioned about Carla, where it has direct effect on people's lives.

Let me ask you, as you prepare the list of 279 rules, could you also ask your staff to put the time period during which they were ineffective on that?

Mr. MURPHY. Sure.

Mr. MCINTOSH. OK. And then I would also ask you if you could request the Government Printing Office to publish that, and I will make that same request as well on behalf of the committee, so that the public knows that time period during which the agencies failed to meet their obligations under the Congressional Review Act.

Mr. MURPHY. We will certainly provide the information.

Mr. MCINTOSH. And if you could also provide it to the Government Printing Office so that they could print it.

Mr. MURPHY. I think it is probably not the Government Printing Office that would be the organization. I think it is the Office of Federal Register, which I believe is in the Department of Commerce, that would be the responsible organization for publishing that list.

Mr. MCINTOSH. Great. Let's make sure they have it, and we will address our request to them.

Mr. Tierney, do you have questions for Mr. Murphy?

Mr. TIERNEY. Yes.

Mr. Murphy, I thank you and the GAO for your effort in implementing the Congressional Review Act. I believe that the Congress should be actively overseeing the executive branch, and in fact I would assume that is why we have the Government Reform Committee to do just that.

Nevertheless, some are concerned about the growing paperwork burden that is connected with the Congressional Review Act's broad mandate. It gives Congress the opportunity to question every regulation, every policy and every rule made by the executive branch.

As you noted in your testimony, agencies filed 115 major and 7,605 nonmajor rules with the GAO since March 29, 1996. And there are a number of proposals, including House Resolution 1704, which this subcommittee will be looking at tomorrow, which will significantly add to the cost of implementing the act.

For instance, H.R. 1704 requires that the legislative branch conduct its own independent cost-benefit analysis for every major rule. Because the GAO can provide important information about how much these analyses would cost, I would like to submit a number of written questions for the record, Mr. Chairman, if I could do that. And I would appreciate, Mr. Murphy, if you would provide me with the answers to these questions before the hearing tomorrow so that the GAO's insight on the cost of H.R. 1704 can be made a part of tomorrow's hearing record. It is my understanding that our staffs have been in touch to ensure these answers are completed by tomorrow's hearing.

[The information referred to follows:]

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

March 10, 1998

The Honorable John Tierney
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform and Oversight

Dear Representative Tierney:

During today's hearing on the congressional review provisions in the Small Business Regulatory Enforcement Fairness Act, you asked that I provide for the record answers to several questions regarding the cost of conducting regulatory impact analyses and other matters. Attached are my answers to those questions.

If you have any further questions, please call me on (202) 512-5400, or Curtis Copeland of GAO's General Government Division on (202) 512-8101.

Sincerely,

Robert P. Murphy
General Counsel

ATTACHMENT ATTACHMENT

QUESTIONS FOR THE RECORD

Q. Has GAO, or anyone else to your knowledge, conducted any studies to determine how costly or time consuming it is to perform a regulatory impact analysis (RIA)?

A. Yes, there have been a number of such studies. First, though, it is important to point out that there is no such thing as a "typical" RIA. The analyses vary substantially depending on the issues involved, the amount of information already available, and other factors. Therefore, the cost of conducting RIAs varies just as dramatically. Also, determining the cost of these studies is not easy. Agencies may not have systematic data on RIA costs, and the factors included in cost estimates may vary considerably.

Nevertheless, several studies that both we and others have done bear noting.

- In March 1997, the Congressional Budget Office (CBO) published a report that examined the costs of 85 RIAs from six offices in four agencies--the Environmental Protection Agency (EPA), the Coast Guard, the Federal Aviation Administration, and the National Highway Traffic Safety Administration.[1] The average cost per RIA was about $570,000, with a range of $14,000 to more than $6 million per analysis. The RIAs also varied considerably in the amount of time they took to complete. The average length of time was 3 years, but the individual analyses ranged from 6 weeks to 12 years.

- The CBO report also summarized five other studies that we and others had done to determine the costs of preparing RIAs. CBO said that the average cost of the RIAs in those studies ranged from 367,000 to $5.6 million in constant 1995 dollars. Again, the average numbers represented a wide range of costs of conducting the RIAs. For example, one of the studies that CBO presented was a 1987 EPA study of 15 RIAs conducted between 1981 and 1986. Of the 12 RIAs with cost data, the average cost was about $675,000 (about $1 million in 1995 dollars). However, actual costs ranged from a low of $212,000 to a high of $2.3 million.

- In December 1996, we reported that the 27 RIAs that EPA had issued after enactment of the Clean Air Act Amendments of 1990

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[1]Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process, Congressional Budget Office, March 1997.

cost an estimated $13 million--or an average of about $480,000 each.[2] The costs to prepare individual RIAs ranged from $46,000 to $3.8 million.

Q. About how many "major" rules are agencies submitting to GAO per year pursuant to the congressional review provisions in SBREFA?

A. As of today, we have received 115 major rules since the congressional review provisions were enacted at the end of March 1996. That is about 1.1 major rules per week, or about 60 per year.

Q. The Congressional Office of Regulatory Analysis or "CORA" contemplated in H.R. 1704 would have to do a completely new RIA for each such major rule, and any "nonmajor" rules that Congress requested. Assuming for a moment that Congress doesn't request RIAs for any nonmajors, how many RIAs would you estimate CORA would have to do each year?

A. Because H.R. 1704 requires CORA to do an RIA for each major rule, and because agencies are submitting about 60 major rules each year, CORA would have to do about 60 RIAs each year. Therefore, CORA would have to complete a new RIA every 4 or 5 days.

Q. If we take the number of RIAs that, on average, have to be done each year and multiply that times the average cost of conducting an RIA, would we not get a reasonable idea of how costly the RIA function in H.R. 1704 would be?

A. You could get a rough idea, yes. For example, using the $480,000 figure in our December 1996 report and multiplying it times the 60 major rules we have received each year, the annual cost of conducting the RIAs would be a little less than $29 million. Because the 60 rules are, by definition, "major" in some respect, the RIAs for those rules could be somewhat complicated. Therefore, RIAs for those rules would probably be more than minimums cited in some of the previous studies. However, I would again like to emphasize that there is no such thing as a "typical" RIA.

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[2]EPA's Costs of Preparing Regulatory Impact Analyses (GAO/RCED-97-15R, Dec. 6, 1996).

ATTACHMENT ATTACHMENT

Q. In 1995, when Congress originally was debating the congressional review provisions that ended up in SBREFA, why was GAO tasked with conducting a procedural review of agencies major rules and not a more substantive analysis, including a separate RIA?

A. Because of concerns that requiring us to do more than just a procedural analysis within the specified reporting period would be extremely difficult and resource intensive. On March 28, 1995, Senator Glenn and Senator Domenici made it very clear that GAO was to perform "an assessment of the agency's compliance with procedural steps...." For example, in response to Senator Domenici's suggestion that GAO be used to provide information to Congress about significant rules, Senator Glenn said

> "I certainly do not object to the GAO proposal so long as we understand, when the Senator proposes it, that it will be on the basis of making sure that the processes have all been gone through that are requested. That would be what GAO would be certifying. GAO would not be required to do their own, independent, cost analysis, cost-benefit ratio and risk assessment, as a completely independent action, which would tie up several times the number of people we have in GAO."

Senator Domenici agreed that the provision was limited to a procedural analysis "because I do not think in 12 or 15 days the GAO can do a thorough substantive review, but they can do a procedural review as prescribed." However, what was being discussed in 1995 was that the reviews would be done of "significant" final rules, which could be several hundred each year. Also, both Senators Glenn and Domenici noted that GAO could do a more substantive analysis of an agency's rule upon request.

Mr. TIERNEY. I also have some questions for you today, sir. When you audited agency compliance with the Congressional Review Act, were there any agencies that performed better than others and diligently filed their rules with the GAO?

Mr. MURPHY. There were 50 agencies which had not filed. There was almost no exceptions. There were agencies that had much better records than others, yes, sir.

Mr. TIERNEY. Which agencies were those?

Mr. MURPHY. If I could ask my associate general counsel who conducted the audit. The Social Security Administration had the smallest percentage of outstanding rules.

Mr. TIERNEY. When you testified, you indicated that after you noticed a number of the agencies that there were compliance issues with filing, you mentioned the EPA and I think the Department of Justice as being particularly responsive?

Mr. MURPHY. Department of Transportation and EPA worked very hard to file their rules with us quickly.

Mr. MCINTOSH. They want to make sure their rules are effective.

Mr. MURPHY. Right. I think that was the motivation.

Mr. TIERNEY. It is a requirement that all these agencies, in order to have their rules effective, file with the Federal Register.

Mr. MURPHY. The Administrative Procedures Act requires that, yes, sir.

Mr. TIERNEY. And before they can file it in the Register or get it published there, they have a whole series of steps that they have to pass through before it gets there?

Mr. MURPHY. They do.

Mr. TIERNEY. And so then filing it again with your agency is just one more hurdle or one more thing they have to do in order for it to become effective?

Mr. MURPHY. Yes, they have to send to us and to the House and Senate essentially what they file with the Federal Register.

Mr. TIERNEY. So they first have to go through all the preliminary requirements for publication in the Register, and then they get it published in the Register, and now they have to file it in three other places.

Mr. MURPHY. They have to file it in three other places, yes, sir.

Mr. TIERNEY. I don't think that necessarily we ought to be making the Congressional Review Act procedure requirements any more burdensome than necessary. I appreciate your efforts to organize the agency's submissions, but I think that we ought not to create needless paperwork in the process.

In a letter to the GAO from OIRA, date-stamped apparently around January 10, 1997, OIRA concludes that the questionnaire is fundamentally flawed and should not be adopted. The letter explains that the information to be collected by the draft questionnaire would not be sufficiently useful to warrant the imposition of this burden on the agencies. The vast majority the 3,000 rules that have already been submitted to Congress have been routine or administrative or address only narrowly focused regional, site-specific, or highly technical matters that do not warrant reporting the level of information that the questionnaire demands.

Would you respond to that for me, sir?

Mr. MURPHY. Well, it was our judgment in talking to a lot of the agencies that the burden that this essentially two-page form would present for agencies would be relatively small. Obviously, we would be prepared to talk with OIRA about ways in which collecting the information could be less burdensome or easier.

For example, in my prepared statement, I talked about the possibility that agencies such as NOAA or the FAA, for example, or the Department of Agriculture, all three agencies of which have large numbers of routine use regulations, could file a single form that could cover all of their regulations unless there was an exception. That would nevertheless require somebody with some familiarity with their regulatory process to fill out a form or to make sure that the form wasn't—that a variation from the form would have to be filed with GAO.

Mr. TIERNEY. Has the GAO in fact set out to prepare such a smaller form, a questionnaire for those types of individuals that are just dealing with routine or administrative matters?

Mr. MURPHY. Unless we have OIRA's support to make this uniform across Government, we are not going to be able to accomplish anything. Some agencies filed comments in addition to OIRA when we went out for comment about the form and said that they were just simply not interested in filing forms at all. Unless we can work with OIRA to get some uniformity and some direction throughout the executive branch, there is little point in that.

I spoke with Ms. Katzen when we were both appearing before one hearing in which she said that it was her view that with respect to nonmajor rules, any reporting of information at all wasn't really warranted. And so what we're looking for is more support from OIRA to try to get some commonality of information.

These rules, the 7,000 nonmajor rules which are filed at GAO, are simply going to end up going into a file drawer and won't be of any use to anybody unless we can get some support from OIRA to get some common information filed with each of those rules and so that we can get something that can be scanned into a data base. Otherwise, the statute is really not going to be of any use to anybody, that part of it.

Mr. TIERNEY. I have no further questions. Thank you.

Mr. MCINTOSH. Thanks, Mr. Tierney.

Let me state for the context here, what we are asking the agencies to do, and what Congress mandated they do under the Congressional Review Act, is scrutinize their process to determine whether they are doing a good job of regulating or whether they are imposing unnecessary burdens on individual citizens, small businesses, the public at large. And over the years there has been a bipartisan agreement about what steps the agencies should take to make that determination.

Congress mandated and Presidents have enforced that an agency should do an environmental impact statement before their regulations go forward. Congress has mandated and required that they look at various impacts on small business, and there has been a bipartisan agreement on that.

Different Presidents have taken the lead on saying that they should do a cost-benefit analysis and look at whether there is a takings in there so that the Government might be exposed finan-

cially down the line. They've also instructed the agencies to look and see whether there is an impact on federalism where the Federal Government is taking more power from the States.

All of the agencies are supposed to be doing that right now. And what I heard Ms. Katzen saying in the comments that she provided to Mr. Tierney was, we don't think as a management team that we need to ask the agencies whether they are following those or not. And to me it is fundamental that good management in the White House, and specifically at OMB, would necessitate that you check back with the agencies issuing those regulations and say, are you following the different processes that were put into place to protect the public and in some cases to protect the Government from legal exposure, and make sure that that is happening in major as well as nonmajor rules, because my experience is that something can be categorized as not a major rule, but have a very, very huge impact on perhaps one sector or perhaps the government.

By the way, Mr. Murphy, how many of the rules that were not reported fit under the definition of a major rule?

Mr. MURPHY. I don't believe any of those that we found that weren't reported were major.

Mr. MCINTOSH. So we see that the agencies on that category, which is a small percentage of them, their performance is a lot better than in the nonmajor area.

Another question, in the definition that we talked about in your statement of agency's statements of general applicability of future effect, in the floor statement I mentioned included policy statements, general guidance on implementation and interpretation and other documents, and as we heard today, perhaps even verbal statements of agency policy that are not put into the Federal Register as part of a formalized process. All of these types of statements are also covered by the Congressional Review Act.

Have you had an opportunity or been able to estimate how many of those type of rules as defined by the Congressional Review Act there are and how many in those cases the agencies have reported to Congress?

Mr. MURPHY. No, unless—the review which we did and talked about in our testimony was relatively simple because you go to the Federal Register and you see what is filed in the Federal Register, and then you can measure that against what is filed with the GAO. In those rules which are not adopted under formal rulemaking procedures and don't appear in the Federal Register, there is really no way to know how many of those may be around. A large agency may have many of them.

Mr. MCINTOSH. So the magnitude could be much greater than what we are hearing about today.

Mr. MURPHY. Could be. Could be. We don't know.

Mr. MCINTOSH. And I have to say, I think a study should be done in terms of those policy statements and guidance and enforcement manuals and other types of rules that are having an effect on the public and try to ascertain, maybe looking at the agency's web sites and other ways in which they make those known, how many of them are out there; and with respect to each of those, have they complied with the Congressional Review Act, or are they acting in

an extralegal fashion in terms of promulgating policies without reporting them back to Congress.

How do you think GAO and OIRA could work together to try to ensure that those type of policy statements would be reviewed to determine whether the agencies are complying?

Mr. MURPHY. Well, it seems to me it would be fundamental for OIRA to tell agencies what it believed a rule to be under the statute. In connection with our review of the Tongass Forest plan, I talked to the Department of Justice attorneys about what the implications would be for our finding that forest plan to be a rule, because I anticipated that maybe one reason OIRA has not provided this guidance is that they are concerned about judicial review under the APA.

As I recall, the attorneys at the Justice Department agreed with me, and that is that a definition of a rule in the APA is different from a definition of a rule in the Congressional Review Act. And so if OIRA would assume the responsibility of providing guidance to the agencies in the first instance by pointing out what the obligations of the agencies are under the statute, it seems to me we would go a long ways toward getting those filed.

Our experience with the agencies is that by and large, once we sit down and talk to them about their obligations and their responsibilities, they take them quite seriously. For the most part, out of the 50 agencies that had not filed rules with GAO that we discovered had been also in the Federal Register, 44 of them very quickly were responsive. But it takes some kind of leadership or guidance in the executive branch, and it seems to me that we have to start there.

Mr. MCINTOSH. So if I am understanding you correctly, the problem isn't as much that the agencies know about these requirements but just decide not to follow them, but that perhaps in the absence of guidance, they don't know what they should be doing. But if at the outset OMB provided appropriate guidance, then the agencies would be more likely to follow through and comply?

Mr. MURPHY. That's our view.

Mr. MCINTOSH. Thank you.

And let me ask you specifically on the Department of Agriculture guidelines, and I guess those are part of the land management plans, don't those have a significant economic impact so they would be a major rule?

Mr. MURPHY. Certainly some of them do. For smaller areas, smaller forest areas, or Bureau of Land Management areas, they might not be major rules. When we looked at the Tongass plan, it was clearly a major rule with substantial economic impact upon the country. But you really don't know until you look at them individually.

Mr. MCINTOSH. OK. But there are major rules that are not following these provisions because they are not being published in the Federal Register?

Mr. MURPHY. That is true.

Mr. MCINTOSH. That is very disturbing.

Let me turn now to Mr. Tierney.

Mr. TIERNEY. Just to cover on that ground again about the Tongass land management plan, in her testimony Sally Katzen

back in January 1997, didn't she clearly state that the land management plans were not a rule?

Mr. MURPHY. No, in fact she didn't. What she said was, I will defer to the agency on the question of whether it is a rule or not.

Mr. TIERNEY. Let me read to you what her testimony was.

Upon your receipt of your letter of invitation and in preparation for this testimony, I sought to ascertain whether the Forest Service has decided whether the Tongass land management plan is or is not a rule as defined by the congressional review statute. I was advised that the Forest Service does not consider this land management plan a rule within the meaning of the Congressional review statute. Since that statute passed on March 29, 1996, the Forest Service has issued six revisions of its land management plans, none of which was treated as a rule under the congressional review statute. Nor, I understand, has the Forest Service ever treated its land management plans as a rule subject to the APA's informal rulemaking procedures under 5 USC 553.

I would note that under Executive Order No. 12866 and its predecessor Orders No. 12291 and 12044, OIRA or its predecessor has been given the responsibility to review agency rulemakings. I am advised that OIRA has never reviewed Forest Service land management plans under these orders. During my tenure, OIRA has not reviewed any Forest Service land management plans, nor do we disagree with the Forest Service's conclusions that these plans do not constitute rules.

So I would assume if she doesn't disagree with their conclusion that the plan doesn't constitute a rule, that she has pretty clearly stated that it is not a rule in her opinion.

Mr. MURPHY. I don't have the transcript of the hearing, but during the course of the hearing, that issue was presented somewhat more directly. It is true that she said, I don't disagree because they haven't been presented before OIRA, and to that extent, I guess that's correct.

Mr. TIERNEY. I note that we talk about people not filing, but in all of the major rules, they have all been filed with your group, and it apparently means that routine or administrative or those that narrowly focus on regional or site-specific or highly technical matters are the ones that we're ostensibly concerned about that have not been filed with your agency. I would like not to impose unnecessary burdens on these agencies by requiring huge questionnaires or questionnaires that don't directly impact that issue on them. And if you can come up with a two-page questionnaire to address one aspect of that, I suspect that GAO can come up with a briefer questionnaire on its own to deal with others. And you indicate pretty clearly to me that those agencies that you contacted that were not in compliance responded to you, so they have been notified by GAO, and they have responded, and I assume you are following up with that; is that correct?

Mr. MURPHY. Yes.

Mr. MCINTOSH. Mr. Tierney, let me mention two things. Frankly, Sally was being a little bit Clintonesque in her legal interpretation there because she knows that the definition that we put into the Congressional Review Act of "rule" is the same as the Administrative Procedure Act, section 551, which is much broader than the definition she quoted of section 553. So she very cleverly misleads the committee in that letter to think that she is saying a rule is not a rule under 551's standard, which is any agency's statement of general applicability and future effect. And the Tongass management plan clearly is that. But what she's really doing is shifting the analysis to the more narrow interpretation under section 553.

Now, Congress considered that we should have a more narrow application of the Congressional Review Act, and we rejected that and said we want a broader application of these general requirements. So it is disturbing to me that lawyers would try to use that type of sleight of hand, if you will, in the definition of what a rule is to escape responsibility for making sure that those policy statements and the land management acts that clearly have major economic impact are not followed through with. And that is the problem I have with OMB in failing to meet their obligations under this statute.

Mr. TIERNEY. Well, two things that I would just note. One is that she seems very clearly to indicate that she's in agreement with the Forest Service land management plan, and she doesn't think it constitutes a rule. And I would hope, and the only other point I would make is that if OMB had in fact had their representative here, even though not a political appointee, we could have addressed those issues, and it would have been a much more informative morning, I think, Mr. Chairman.

Mr. MCINTOSH. My only point is that when she is saying not a rule, does she mean under 553 or 551?

In fact, let me take that opportunity to bring the hearing to a close and thank our witnesses and say that I would like to have another hearing very soon giving OIRA and OMB an opportunity to come and begin the process of goodwill, cooperative working relationship between this subcommittee staff and the GAO.

My suggestion is that in advance of that hearing that GAO and OIRA meet, work with us in trying to accomplish some resolution to the issues that have been raised today, and that at the next hearing we will invite OIRA. And I would ask your help, Mr. Tierney, in perhaps impressing upon OMB the need to not only have Don Arbuckle, whom I have worked with before, he is a good man, he will be very straightforward, and he understands this, but also somebody with political accountability from OMB to come before this committee and tell us what are your policy calls. Are you going to help us implement this, or are you going to decide that OIRA shouldn't have any effect on it?

And I am told that the appropriations subcommittee that helped us get the $200,000 for OMB is very interested in the answers to those questions as well, as we are appropriating additional funds for them to implement the statute and they want to know are they doing it.

So let's work together to try to get OMB to sit down with GAO and our staff in advance, and I would welcome somebody from your staff to participate in that, to see what we can do to get this resolved and moved forward, and then we will have another hearing to bring forward the political appointees as well as Don and GAO and find out where we are going.

Thank you. And with that, the subcommittee stands adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Statement of Angelo Sanabria, March 10, 1998

My name is Angelo Sanabria. I live in Miami, Florida with my son Luis, who is seven years old. I am an American citizen. My son Luis is also an American citizen. Luis is very sad because he can no longer be with his mother, who is my wife, Karla Sanabria.

Last year, on April 29, Karla was deported from Miami to Nicaragua. This is what happened. Karla and I married in February 1995 in Miami. On April 22, one week before the INS deported Karla, she and I went to the INS office in Miami for a hearing. I was with her at the time. Instead of a having a hearing, the INS agent gave her a form to fill out. It was a "bag and baggage form" — something about any bags she would be taking with her.

They told her that she would have to leave her son Luis with me, and that she would have to go back to Nicaragua. Karla cried. We were all very sad. We were also very surprised, because we were there for a hearing. Instead, it seemed like a trick to find her and take away her son.

I am happy that he is with me, but it was very sad for both Karla and Luis. I hope we will all be together again some day, but I don't know when that will be. I don't think the government will let her come back to America.

Statement of Michael Feldenkrais, attorney for Angelo Sanabria, March 10, 1998

My name is Michael Feldenkrais. I am an attorney in Miami, Florida, where I practice immigration law. I represent Angelo Sanabria on behalf of his wife Karla Sanabria. I am receiving no compensation for any services rendered to the Sanabrias.

This statement explains that Karla Sanabria was deported pursuant to regulations illicitly issued in violation of the Congressional Review Act.

Under the CRA, a "major" rule (as designated by the Office of Management and Budget) cannot take effect until 60 days after the rule is published in the Federal Register or reported to Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A).

In this case, the INS issued a rule last entitled, "Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule." The Office of Management and Budget designated the rule as "major," making the rule subject to the 60-day delay requirement.

This final rule was published in the Federal Register on March 6, 1997, and reported to Congress on March 14, 1997. Counting 60 days from March 14, 1997, the rule should not have taken effect prior to May 13, 1997. Nevertheless, in violation of the CRA, the INS gave the rule an effective date of April 1, 1997, 45 days before the expiration of the required delay period.

The INS claimed that the rule fell within the "good cause" exemption from the 60-day delay requirement for major rules under § 808(2).

However, as Mr. Murphy of the GAO testified, the good cause exemption under § 808(2) is available only if the agency has issued no notice of proposed rulemaking and receives no public comments on the proposed rule. In the case of the INS rule, the INS published a proposed rule on January 3, 1997 and received comments over a 30-day period. The fact that the INS may not have planned to allow sufficient time to observe the required 60-day delay does not excuse the agency from violating and misinterpreting the plain text of the CRA's good cause exemption.

The procedures established by these illicitly issued regulations were applied by the INS to all alien removal cases beginning on the stated effective date of the regulations — April 1, 1997. Any action taken pursuant to these rules between April 1 and May 13, 1997 was taken prior to the elapse of the required 60-day delay period and was therefore legally null and void.

The actions taken by INS in deporting Mrs. Sanabria took place within this 60-day window. On April 22, Mr. and Mrs. Sanabria appeared for the I-485 interview. The Service failed to interview the married couple. Instead of conducting an interview, the INS, in accordance with the illicitly issued regulations, served Mrs. Sanabria with a "bag and baggage" form that stated she would be deported.

On April 29, 1997, the INS deportation officer in Miami, acting pursuant to the illicitly issued regulations, prepared for signing a release affirming that Mrs. Sanabria relinquish custody of her son, Luis, to her husband, Angelo. On the same day, the INS, acting pursuant to the illicitly issued regulations, deported Mrs. Sanabria to Nicaragua.

I cannot say with certainty whether Karla, or any other immigrant who was deported would still be in the country today if these regulations had not been issued illegally. Nevertheless, in my professional opinion, I think it is fairly certain that Karla and many other persons who were legal residents would have had additional opportunities for hearings and appeals, and that many of them would have had, at a minimum, a few extra days or weeks to spend with their families and prepare to depart in a dignified manner.

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